HUMAN RIGHTS AND RENTAL HOUSING IN ONTARIO

Background Paper

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HUMAN RIGHTS
COMMISSION

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Introduction

It is difficult to overstate the importance of adequate housing to an individual's ability to fully participate in and be a part of his or her community. Adequate housing is a necessity. It is also a prime indicator of an individual's overall quality of life. Housing provides the foundation for interacting with the broader community and for general well-being and social inclusion. Adequate housing facilitates access to suitable employment, community resources and supports, and educational opportunities for all Ontarians.

Housing that is not adequate and stable, because it is in a state of bad repair, overcrowded, unaffordable, or in an unsafe neighbourhood, can cause an enormous amount of stress to its inhabitants. International studies have established links between inadequate, unstable housing and poor health. For example, inadequate housing has been linked to health ailments such as birth defects, higher rates of asthma, cancer and cardiovascular disease.[1] Further, "[t]he use of pesticides, pests, lead paint, leaking pipes, all of which are associated with poor housing can also bring on symptoms of ill health."[2]

The Ontario Human Rights Commission (the "Commission") has heard for some time now about discrimination in rental housing arrangements.[3] In 2000, the Commission held a province-wide consultation on discrimination and age. Throughout that consultation, the Commission received much input on human rights issues affecting older persons in rental housing. As a result, in its 2001 report, *Time for Action: Advancing Human Rights for Older Ontarians*, the Commission committed to developing a paper specifically on housing and human rights.[4] In other initiatives, the Commission has explored the role that one's social and economic condition may play in one's ability to access basic necessities, such as housing.[5] As well, in 2005, the Commission conducted a consultation on discrimination and harassment that occurs on the basis of an individual's family status.[6] During this consultation, the Commission also received much feedback on specific discriminatory practices that occur in the context of rental housing. The Commission heard that these practices occur not only on the ground of family status, but also on other grounds, such as race, sex, sexual orientation, age, disability and receipt of public assistance.

It is evident from the feedback received that many Ontarians are entirely unaware of their rights and their obligations under the Ontario *Human Rights Code* (the "*Code*") with respect to rental housing. Many rental accommodations take place as largely informal arrangements. Housing providers may not be aware that the *Code* prohibits them from specifying certain types of restrictions in the rental of their units. For example, many continue to advertise apartments as "adults only", not recognizing that this restriction is in direct violation of the *Code*.

While the *Code* protects against discrimination in a broad range of situations relating to housing, this Paper will focus on residential tenancies, or rental

housing arrangements. Housing studies indicate that those who live in rental housing are persons, typically, who have lower incomes and who are disproportionately vulnerable to discrimination and therefore identified by the *Code*.[7] As such, the paper does not review discrimination in the purchase of property or the negotiation of mortgages, for example, or, human rights issues that occur in condominium living arrangements, such as discriminatory restrictions on the use of shared spaces. However, it should be noted that such practices would also constitute violations of the *Code*, and a housing or service provider who engages in these behaviours is vulnerable to having a human rights complaint filed against it.

When someone is denied adequate rental housing or is treated differently because of his or her family status, age, race, sex, disability, receipt of public assistance or other *Code*-related ground, he or she is denied the ability to be a full participant in the community. The same is true when an individual is treated in a discriminatory manner or subjected to harassment in the course of occupying rental housing. For example, exorbitant security deposits required of new Canadians by landlords may mean that families new to Canada have very limited choices when it comes to where and how they will live. This, in turn, will affect their ability to access a whole array of other community services, and will have a significant impact on their overall ability to adjust to their new homeland.

In order to fulfil the objectives of the preamble to the *Code*, for example, "to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination"[8], adequate and affordable rental housing is essential. As the Ontario Non-Profit Housing Association and the Co-operative Housing Federation of Canada have observed:

> How can we integrate and increase the productivity of new Canadians, our aboriginal peoples, our disabled and single parent families if we cannot start with access to decent affordable housing? How can we expect our health policies and our educational programs to succeed without accessible affordable housing as the foundation? How can we support those suffering from addictions or mental illness or family violence without being certain that they have safe, decent housing?[9]

This Paper is intended to provide an overview of the social and legal context for understanding the human rights issues in the area of rental housing. The Commission sees this Paper as the background for a broad exploration of human rights issues in the area of rental housing.

The Rental Housing Landscape in Ontario

Access to Affordable Rental Housing

It seems clear that one of the central causes of the difficulty that many individuals in Ontario have in accessing living accommodations is the lack of adequate, affordable rental housing.

In 1995 the Ontario government implemented a series of housing policies which dramatically decreased both the availability of affordable rental housing options and legal protections for tenants in Ontario. For example, in 1995, the government cut social assistance rates, including shelter allowances, by 21.6 percent. Also in 1995, the government cut approximately 17,000 units of co-op and non-profit housing that were then under development. In addition, it discontinued funding to existing social housing projects, and downloaded the costs and administration associated with social housing to municipalities.[10] The *Tenant Protection Act, 1997*[11], which the government passed in 1998, eliminated rent controls on vacant units and made it far easier for landlords to evict tenants.

In many instances, the dramatic rent increases that took place during the 1990s have remained inflated despite higher vacancy rates in recent years. There are extremely long waiting lists for subsidized housing, and the creation of new social housing units has been sparse. The private rental supply is further dwindling as rental units in Ontario are converted for non-rental purposes and most private developers prefer the lucrative condominium market to the less profitable rental housing market.[12] Increased levels of immigration, particularly in Ontario's city centres, have further increased the demand for rental housing.

While vacancy rates for rental apartments across Ontario may have increased in recent years, many continue to face problems accessing rental housing due to affordability issues. Statistics Canada and the Canada Mortgage and Housing Corporation ("CMHC") define "affordability" as "housing that costs less than 30 percent of total before-tax household income." "Household income" is defined as "all incomes reported by persons 15 years of age and older living in the household."[13] The term "housing conditions" is used to refer to:

> [A] set of specific measures summarizing the circumstances in which individual households live. These measures indicate whether housing is in good physical condition (adequate), whether it is spacious enough for its occupants (suitable), and whether it is affordable. In this framework, housing that is acceptable is housing that meets all three criteria, that is, housing that is adequate, suitable and affordable.[14]

According to a recent report published by Statistics Canada and the CMHC, rental housing that is not affordable is much more common in Canada's Census Metropolitan Areas than housing that is inadequate or unsuitable.[15] Not

surprisingly, renters are much more likely to be in "core housing need"[16] than owners. For example, in Toronto in 2001, one in five households were classified as being in core housing need (20.3 percent).[17]

The average rent for a standard, two-bedroom apartment in Ontario increased by 5.6 percent in 2000 from 1999. This increase amounted to double the rate of inflation in that year.[18] In Ontario's city centres, it is likely that the average rent for comparable units increased by much greater percentages during this time period.

A strong argument can be made that the decreased availability of affordable and adequate housing options, combined with inadequate social assistance levels, insufficient wages and discrimination against *Code*-identified groups, has contributed in a very significant way to increasing homelessness in Ontario's cities. The Golden Report recognized this effect when it recommended that "[a]t least 5,000 additional housing units with support services should be built in Toronto over the next five years, primarily to serve homeless people suffering from mental illness and/or addictions."[19]

There is less information about housing needs in rural areas.[20] Ownership, rather than rental, is the predominant form of tenure in rural Canada (82 percent rural, compared to 64 per cent in urban areas). However, affordable housing is an important issue. New rental housing is not economically feasible in most rural areas due to small local markets, risky economic conditions and a limited construction industry. The lack of supply or choice affects low income persons, persons who want to move into rural areas and seniors who want to move from homes that they have owned. In addition, the stock of housing in rural areas is older, on average, than in urban areas which presents a challenge in terms of the need for, and cost of, repairs and maintenance. Both owners and tenants face high heating and utility costs in older, poorly insulated buildings. This is more extreme in northern communities. Seniors are an important part of rural communities and may be particularly impacted by these conditions.[21]

The governments of Canada and Ontario have signed an Affordable Housing Agreement which is slated to create more than 15,000 units of affordable housing and provide housing allowances for more than 5,000 lower-income households in Ontario. As of August, 2006, more than 3,400 housing allowances were available in designated Ontario municipalities, and funding was allocated for 6,524 units as follows: Rental & Supportive – 117 projects (5,440 units), Homeownership – 7 projects (884 units), Northern Housing Component – 4 phases (200 units).[22] This is a step in the right direction; however, it appears that monitoring the agreement, including its implementation and continued funding, is an important priority.

In addition, while money has been earmarked for affordable housing, and many municipal governments have created affordable housing strategies[23], a major

barrier to the creation of new affordable and supportive housing[24] is the phenomenon of "Not in My Back Yard" or NIMBY opposition.

NIMBY does not refer to legitimate public consultations or concerns about land use and planning, but to the response to affordable and supportive housing because of negative attitudes towards the people who will live there. NIMBY responses are often concerned that such housing will bring down property values, create safety risks or otherwise ruin the neighbourhood.[25]

Municipal requirements and practices are influenced by these responses. As a result, many municipalities have by-laws designed to prevent people with low incomes and disabilities or others such as newcomers to Canada, Aboriginal persons and youth from moving into certain neighbourhoods. A few examples include minimum separation distances between certain types of housing (e.g. residences for persons with disabilities); zoning definitions based on the characteristics of the people who live in the housing; holding development moratoria that prevent social housing providers from developing on residentially zoned land; and planning processes that place more consultation requirements on affordable or supportive housing.[26]

Local politicians and community groups may try to draw out public consultation until funding is lost. Planning decisions may be appealed to the Ontario Municipal Board (OMB) and while the Board consistently finds in favour of the housing project, the delays and costs involved are prohibitive.[27]

All of this means that public funds are diverted to efforts to overcome NIMBY, rather than building more affordable housing itself. Development of housing is delayed and, at the end of the day, worthwhile projects may not be built. In other instances, design compromises that are detrimental to the future occupants of the housing must be made.[28]

Barriers to housing that are based on negative views of the people who live there, raise human rights concerns when those people are identified by *Code* grounds. Persons identified by *Code* grounds should not have to ask permission of their neighbours before moving in, where that restriction does not apply to others. Efforts to keep out persons with disabilities (including mental and developmental), persons on social assistance or with low income, newcomers to Canada, Aboriginal persons, youth and so forth call for consideration from a human rights perspective. Preventing racialized persons or persons from certain religions, for example, from moving into a neighbourhood would be universally considered offensive. However, it appears that some Ontarians may still believe that it is acceptable to exclude from their neighbourhood people who are mentally ill, disabled or poor.

Social Housing

Social housing in Ontario is covered by the *Social Housing Reform Act, 2000*[29] ("*SHRA*"). When properly funded and operated efficiently, social housing has been one of the most effective ways of providing affordable and adequate housing to Ontarians. Social housing programs have the potential to provide viable housing options to individuals and families who cannot compete in the private rental housing market.

In Toronto, for example, between 1973 and 1995, approximately 50,000 rental units were created, of which 45,000 were new construction. This brought the total number of subsidized units in Metro Toronto to about 20 percent of the total rental stock.[30]

However, the federal and provincial governments have increasingly abdicated responsibility for social housing programs. In 1986, the federal government transferred its supply of new social housing programs to the provinces, although it continued to share the costs with them on a 60:40 basis. In 1993, it discontinued this cost-sharing arrangement, leaving the responsibility with the provinces. In Ontario, in 1995, the newly elected government cancelled new social housing spending. Since then, the province has transferred responsibility for funding and administering social housing to the various municipalities.[31]

Many have expressed the view that government withdrawal from social housing programs has resulted directly in a chronic housing shortage for low-income individuals and families. In Toronto, for example, as of June 2006, there were 66,556 households on waiting lists for social housing.[32] The Golden Report Task Force has concluded that the social housing waiting list is a good proxy for the at-risk population because the research shows that almost all the people on the list are there because they cannot afford housing in the private rental market.[33]

Many applicants for social housing units will be identified by *Code* grounds. There are several broad categories of social housing applicants: older persons applying for the support, community, and income security offered by older persons' housing projects; employed, low-wage people experiencing a shortfall in earnings; persons with disabilities; and those who are homeless or have special needs. This latter group includes many people receiving social assistance. There is a strong correlation between low levels of income and *Code* grounds such as sex, race, marital status, family status, citizenship, place of origin, disability, age and the receipt of public assistance.

While the Commission has most often heard reports of discrimination with respect to the private rental market, concerns have also been raised regarding allocation and administration of social housing.[34] For example, frequently, social housing providers lack adequate internal complaint mechanisms for responding

to issues of discrimination in the selection of tenants. As well, social housing projects that are aimed at persons less than the age of 65 or at a particular community of persons (*e.g.* housing limited to persons from particular ethnic or religious groups) are often beneficial but may sometimes raise human rights issues where they do not comply with the requirements of the *Code*.[35]

In the family status consultation held by the Commission, CERA identified specific concerns with regard to discrimination in social housing. For example, the organization noted that the waiting lists at social housing organizations are often divided into two separate lists: there is one list for individuals who are on social assistance and another list for individuals who can afford the market rent. These waiting lists are in chronological order and have a negative impact on young adults and families. For example, waiting lists for subsidized housing with City Home in Toronto is between 7 and 8 years long; thus the chronological waiting list effectively bars young people and families with young children from accessing affordable housing in a timely fashion.

Larger families may be similarly disadvantaged in the allocation of social housing. For example, in subsidized units, larger families may be required to apply only for larger units which are in short supply and are difficult to obtain, and may be disqualified altogether for eligibility for subsidy by their family size if there are no subsidized units large enough. This may be the case even where the family could live in a smaller unit without contravening municipal occupancy standards (specifying the number of people who can occupy the space).

Those in receipt of public assistance may also encounter difficulties with social housing policies. Individuals and families living in subsidized arrangements pay a rent amount that is related to their income. However, subsidized housing costs may become problematic if an Ontario Works participant begins a new job. As his or her income rises, so does the rent and thus, the household does not benefit from the additional employment income.[36] Instead of a dollar-for-dollar rent increase, a phased in approach to increasing rent might better enable such a person to transition into employment, which often results in new expenses, and to achieve financial stability.

During the Commission's family status consultation, the Advocacy Centre for Tenants Ontario (ACTO) raised the issue of the lack of external appeal procedures under the *SHRA* from decisions of social housing providers to deny or revoke housing subsidies. Revocation of subsidies may lead to evictions, as rent falls into arrears. ACTO stated that:

> Social housing tenants, many of whom are sole support mothers, disabled people and immigrants, risk homelessness because the only appeal is an 'internal review'. These internal reviews are conducted by the same housing provider that made the decision under review. Social housing

> providers rarely overturn decisions on internal review. When the review is unfair, the only process potentially available is judicial review.[37]

As well, concerns were raised about the administration of the requirement, under the *SHRA*, for occupants to report a change in income or household size. Managers have the discretion to extend this timeline; however, not all do, so that families that fail to quickly report the addition of a child to the household may lose their subsidy.

It seems obvious that social housing that is in good supply, good condition[38], properly funded and run in accordance with human rights principles has the potential to ease considerably the shortage of affordable housing options for many individuals identified by *Code* grounds. There appear to be issues with the current state of social housing in Ontario that require further consideration from a human rights perspective.

Co-op Housing

When it is available, co-op housing can be an attractive source of quality accommodation for Ontarians who cannot afford adequate options in the private rental housing market and/or who wish to live in a more community-oriented setting. Unfortunately, however, new co-op developments are rare in Ontario, and the extremely lengthy waiting lists for most of those that do exist can be a major barrier.

The Ontario *Co-operative Corporations Act*[39], (the "*CCA*") outlines how all Ontario co-ops, including housing co-ops, are to be formed and run. The bulk of the legislation sets out how co-ops may be incorporated, their powers and governance, handling of shares and finances, meetings, record-keeping, financial statements, and so on.

The *CCA* also addresses issues that are specific to non-profit co-operative housing, such as housing charges, creating by-laws, the obligations of members and the co-op to each other, and processes for evicting members. [40] Housing charges are set by the members, and the board of directors may establish subsidies, subject to the by-laws and to procedural fairness. Co-op housing members may be evicted if they have either ceased to occupy a member unit, or failed to meet an obligation set out in the by-laws, as long as the by-law is not unreasonable or arbitrary. Both membership and occupancy rights of a member must be terminated at the same time, requiring a majority vote of the board. Members must be given 10 days' advance notice of such a meeting, stating the proposed eviction date, and receive a written notice within 5 days of the decision. Members may appeal the decision to a meeting of the members, and may appear and make submissions at both the board and the member meetings. The member meeting must be held at least 14 days after the appeal is requested, and the appeal decision is made by a majority vote.

Section 171.7 of the *CCA* stipulates that the *RTA* does not apply with respect to member units[41] of co-operative housing. However, this subsection indicates that if a legal claim was made under the *RTA* (such as if the co-op was formed subsequent to initiation of proceedings, or if a matter arises relating to a non-member unit), the court may continue to address it as a landlord and tenant matter.

The Commission has heard concerns about policies and procedures occurring in the housing co-op context. For example, human rights complaints have been filed regarding the practice whereby a housing co-op charges as rent the entire shelter allowance of a tenant on public assistance, which obliges the occupant to make additional payments for utilities, even though the shelter allowance was intended to cover the cost of utilities.[42] As well, by-laws, such as requirements that co-op members participate in co-op activities, have raised issues around accommodating disabilities. In a recent decision, the Ontario Divisional Court has considered this situation and has confirmed that the *Code* applies to co-ops as well as to courts deciding whether to evict a person under the *CCA*.[43]

General Law Governing Residential Tenancies

The *Residential Tenancies Act, 2006* ("*RTA*") took effect on January 31, 2007 and replaces the *Tenant Protection Act, 1997* ("*TPA*"), in effect in Ontario since June 17, 1998.

The *TPA* covered landlords and tenants of most residential rental units, including mobile home sites and units in care homes. It established the Ontario Rental Housing Tribunal, a quasi-judicial agency that resolved disputes between landlords and tenants about rights and responsibilities under the *TPA*, including issues such as rent increases, evictions and maintenance. A landlord and tenant were given the option of mediation to reach their own resolution of a dispute. The *TPA* granted the Tribunal certain specified powers despite anything contained in the legislation or in a lease, such as the power to make orders where a housing provider obstructed, coerced, threatened or interfered with a tenant, and the discretion to refuse, delay or order evictions of tenants.

Under the new *RTA*, the Ontario Rental Housing Tribunal has become the Landlord and Tenant Board. The *RTA* contains provisions to encourage landlords to maintain their buildings and provide more remedies to tenants living in poorly maintained buildings. The *RTA* grants tenants more protection against evictions, in many instances. For example, every tenant facing eviction has access to a mediation or hearing without having to first file a written dispute. Further, the Board is required to automatically consider a tenant's circumstances before permitting an eviction. This includes, where applicable, considering the *Code* in its decisions. In a 2003 decision[44], the Ontario Divisional Court found that the exercise of discretion granted to the then Ontario Rental Housing Tribunal required application of the

Code. In that case, the landlord sought to evict a tenant with schizophrenia who the landlord alleged was disruptive when she ceased to take her medication. The tenant argued that the Tribunal ought to refuse to grant an eviction order as the landlord could accommodate her disability without undue hardship. The Court agreed. This has been reinforced by the Supreme Court of Canada's decision in *Tranchemontagne* v. *Ontario (Director, Disability Support Program)*[45] which found that an administrative tribunal empowered to decide questions of law should apply the provisions of the *Code* in rendering its decisions.

Some controversial aspects of the *TPA* have been retained in the *RTA* and some of the latter's provisions may create new concerns for tenants. For example, landlords will continue to have the discretion to set rental rates on vacant units without restrictions. Where a tenant is found to have caused a disturbance in a home cohabited by a landlord (*e.g.* playing loud music late at night) or caused "excessive or wilful damage" to a unit, the eviction process has been shortened, with the notice period to the tenant being reduced to 10 days from 20 days. In some cases, the Board will have the discretion to order an immediate eviction of the tenant. A landlord will continue to be permitted to require last month's rent as a deposit before a tenant moves in. Landlords will not be allowed to require automatic debiting of bank accounts for rent payments.

It has come to the Commission's attention that, in some cases, legislative requirements may create systemic barriers for tenants. For example, under the *Tenant Protection Act*, a tenant was defined to include "a person who pays rent in return for the right to occupy a rental unit and includes the tenant's heirs, assigns and personal representatives". This did not include spouses and family members who ordinarily reside in the rental unit. Therefore, if the "tenant" died or vacated the unit, spouses or family members had few rights. This left many families at a serious disadvantage. During the Commission's family status consultation, ACTO brought to the Commission's attention one case where a landlord brought eviction proceedings against a woman and her three children after the husband, who signed the rent cheques, left. Prior to the husband's departure, he signed a Notice of Termination at the request of the landlord. The woman had been living there for 17 years. This case was eventually settled, with the landlord agreeing to allow the family to stay at the same low rent. The *RTA* partially addresses this matter by expanding the definition of "tenant" to include spouses.[46]

Other Standards

Municipal occupancy standards, or overcrowding by-laws, regulate the maximum number of persons who may occupy a rental housing unit.[47] They may have an adverse impact on large families (or extended families), newcomers to Canada who for socio-economic reasons are required to share accommodation, or persons from diverse cultural traditions who have different ways of using rental housing. At the same time, there does appear to be a legitimate need to guard

against unacceptable overcrowding, for example due to health and safety concerns for residents themselves or neighbours, and also to recognize the increased strains on infrastructures such as electrical systems, plumbing and elevators that widespread overcrowding can cause.

In addition, zoning by-laws that exclude or severely curtail the use of secondary suites (*e.g.* basement apartments) also raise issues. On the one hand, concerns have been raised about the ability to effectively ensure health and safety requirements in these units. At the same time, it has been noted that such suites can be a major source of affordable housing.

Issues around occupancy standards, how and on what basis they are being set, and how they are being applied, as well as the use of secondary suites may benefit from further discussion in the human rights context.

Discrimination in Rental Housing

While an inadequate housing supply certainly makes it more difficult for all Ontarians to find acceptable housing, this is only part of the problem that many individuals face in the rental housing context. Numerous reports indicate that many individuals have a more difficult time finding acceptable rental housing due to discrimination practised by housing providers. These challenges are present irrespective of rental housing supply, although discrimination against tenants is exacerbated by an inadequate rental housing supply. When rental housing is in demand, housing providers can afford to be highly selective in choosing tenants and have less incentive to treat tenants well.

In other words, where discriminatory attitudes already exist, there is much room for their expression in a landlord's rental market. One study concluded that discrimination is more likely to occur in a rental market with a low vacancy rate. Further, landlords may be more hesitant to rent to groups that they perceive to be "high risk" when eviction laws are strict and it is difficult to evict tenants. The same study also found that discrimination is more likely to be practised by small-scale landlords, particularly those who live alongside their tenants.[48]

Housing researchers have long reported that the conditions of the rental housing market in Ontario have a disproportionate impact on certain households. Statistics Canada and the CMHC have identified the following groups as being at high risk of housing need:

- Aboriginal households
- Lone-parent households, particularly women
- People who live alone, particularly women and older persons
- Recent immigrant households[49]

In its 2004-2005 Annual Report, the Centre for Equality Rights in Accommodation ("CERA") reported that 60 percent of its clients were women, over 50 percent were people in receipt of public assistance, and a significant number were lone parents and people with disabilities. It also reported that in addition to discrimination based on disability, receipt of public assistance and family status, clients frequently reported discrimination on the basis of ethnic origin, place of origin, race and age.[50]

The sections that follow detail different forms of discrimination based on *Code* grounds or an intersection of multiple *Code* grounds.

The Commission Caseload

In 2004-2005, the Commission received 100 complaints relating to discrimination in housing.[51] While this number amounts to only about 4 percent of the total complaints received by the Commission during this time period, the complaints that have been filed frequently raise significant systemic issues, issues that potentially affect large numbers of people besides the actual complainant.[52] It should also be noted that many individuals experiencing discrimination in rental housing may find it difficult, for a number of reasons, to come forward to file a complaint. For example, feedback from individuals and groups indicates that a significant number of tenants in Ontario who have experienced discrimination and/or harassment are "non-status" Canadians. These individuals may fear a fall-out with immigration authorities if they challenge unfair treatment through the human rights system. In addition, those who are new to the country may also experience language barriers which make it extremely difficult to access housing information and to advocate for one's rights.

To date, the Commission has not had the opportunity to devote significant resources to public education in the area of rental housing and it is quite likely that the public's general lack of awareness of the *Code*'s protection against discrimination and harassment in this area contributes to these relatively low numbers. Further, time is of the essence for those who experience discrimination and/or harassment in rental housing, and once a housing opportunity is lost, one may not see the human rights system as capable of providing practical redress and may, therefore, not see the point of filing a complaint. Therefore, it should be kept in mind that the actual number of complaints filed with the Commission is likely not a reliable indicator of the true extent of discrimination in housing.

Housing and Human Rights in Canada

All jurisdictions in Canada provide for some protection from discrimination in the social area of housing.[53] Harassment is not explicitly addressed in all cases,[54]

but may be dealt with as a form of discrimination. Please refer to the comparative chart in Appendix B, which outlines the scope of housing protections by jurisdiction.

Some human rights commissions have produced public documents addressing housing protections in more detail. Both Manitoba and New Brunswick have developed guidelines relating to housing.[55] Quebec has produced an on-line information sheet to advise housing seekers about steps to take when seeking housing, or if they are denied housing for what they believe to be discriminatory reasons.[56] The B.C Human Rights Coalition, a community-based non-governmental organization, has also developed a document outlining the scope of protections offered in British Columbia, including a section addressing rights relating to tenancy.[57]

Human rights legislation in many jurisdictions includes a general statement indicating that there may be exceptions to housing (and other) protections relating to special programs or *bona fide* qualifications. In addition, there are a number of explicit exceptions relating to housing protections in Canadian jurisdictions. Many of these exceptions relate to specific grounds. Some jurisdictions provide for exceptions relating to sex: a few, like Ontario, provide for exceptions where all occupants of a building are of the same sex, aside from the owner, owner's family, or an agent of the owner.[58] Others allow for sex-related exceptions where it is a "reasonable criterion"[59] or seen to be related to privacy or decency[60] in accommodation.[61] Two jurisdictions specify that owners may give preference to members of their families: of these, the Northwest Territories further allows preference on the basis of family affiliation.[62]

There are also age-based exceptions: for example, Alberta excludes age from housing protections altogether, while in British Columbia, Saskatchewan, and Newfoundland, exceptions allow for housing geared toward persons 55 years of age and older.[63] In New Brunswick, there are exceptions relating to those under the age of majority, if such discrimination is required by other legislation and regulations.[64] British Columbia provides explicit exceptions relating to housing geared toward persons with physical and mental disability, if it is designed to accommodate their needs.[65]

Most jurisdictions provide for exceptions to anti-discrimination protections in housing based on shared facilities. Some jurisdictions allow exceptions for choice of tenant by those who will share the residence: legislation refers variously to choice of roomers or boarders by occupants,[66] accommodation in a private residence,[67] or shared cooking, washroom, or sleeping facilities.[68] Nova Scotia and Quebec provide similar but more limited exceptions, applicable where only one room in a private house is rented, the rest of the house is occupied by the landlord, and the room is not advertised in any way.[69] In some cases, shared-facilities exceptions are not explicit, but result from the definition of housing

protections as relating specifically to self-contained units,[70] or to self-contained units that are advertised in any way.[71]

Some jurisdictions also provide for exceptions relating to tenants of a duplex or other two-unit dwelling, if the owner and/or owner's family resides in the non-rented unit.[72] In Saskatchewan, an owner who resides on a property may discriminate on the basis of sex or sexual orientation if the accommodation is made up of no more than two units.[73]

Housing as an International Human Right

The international community has long recognized that housing is a human right worthy of protection. For instance, both the *Universal Declaration of Human Rights*[74] and the *International Covenant on Economic, Social and Cultural Rights* ("*ICESCR*")[75] recognize a right to housing.[76]

Other international treaties have also affirmed the right to housing including the *International Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention on the Elimination of All Forms of Discrimination Against Women* and the *Convention of the Rights of the Child*. Canada has ratified all of these treaties.

As a signatory to the *ICESCR* and other international human rights instruments, Canada has agreed to take appropriate steps towards the realization of the right to adequate housing. Housing is a subset of social and economic rights more broadly and must be understood in this light. While the *Code* does not protect the broad range of social and economic rights set out in international instruments, it affirms the right to equal treatment in housing without discrimination on the basis of *Code* grounds. The values reflected in international human rights laws are to be used as an aid to interpreting the rights in the *Code*. For a more detailed discussion of Canada's international obligations in relation to social and economic rights and housing, please refer to "International Commitments" under the "Social and Economic Condition" section of this Paper.

Rental Housing and the Ontario *Human Rights Code*

Status and Purpose of the Code

The *Code* is quasi-constitutional legislation which has primacy over all other legislation in Ontario, unless the other legislation specifically states that it applies despite the *Code*.[77] This means that if another piece of legislation contains a provision which conflicts with or contravenes the *Code*, the *Code* will prevail.

This primacy is specifically recognized in the context of rental housing. For example, the *RTA* contains a provision which states that the Act will override any other Act that may conflict with it, *except* for the *Code*.[78] In addition to this, several Ontario Rental Housing Tribunal decisions have recognised the *Code's* supremacy and special status in their rulings.[79]

The purpose of the *Code*, as stated in its Preamble, is to create:

> ...a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province.

The Preamble also recognizes that it is public policy in Ontario:

> ...to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination...

Protections

In relation to housing, the *Code* aims to ensure that everyone has the equal opportunity to access housing accommodation and its attendant benefits without discrimination on any of the grounds protected by the *Code*. In this regard, subsection 2(1) of the *Code* provides:

> Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.

Subsection 2(2) prohibits harassment in accommodation:

> Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, disability or the receipt of public assistance.

Subsection 7(1) specifically addresses sexual harassment by a landlord, agent of the landlord or co-tenant:

> Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.

Sexual solicitation by a person in a position of relative power vis-à-vis a tenant is prohibited by subsection 7(3):

> (3) Every person has a right to be free from,
>
> (a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
>
> (b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

In the context of rental housing, the person in a position to confer or deny a benefit would most likely be the landlord or superintendent of a residential dwelling.

Defences and Exceptions

Section 18 of the *Code* offers a defence for some housing providers:

> The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified.

Section 21 of the *Code* sets out three exceptions to the equality rights with regard to housing:

> (1) Shared accommodation
>
> The right under section 2 to equal treatment... is not infringed by discrimination where the residential accommodation is in a dwelling in which the owner or his or her family reside if the occupant or occupants of the residential accommodation are required to share a bathroom or kitchen facility with the owner or family of the owner.
>
> (2) Restrictions on accommodation, sex
>
> The right under section 2 to equal treatment ... without discrimination because of sex is not infringed by discrimination on that ground where the occupancy of all the residential accommodation in the building, other than the accommodation, if any, of the owner or family of the owner, is restricted to persons who are of the same sex.
>
> (3) Prescribing business practices

> The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed if a landlord uses in the manner prescribed under this Act income information, credit checks, credit references, rental history, guarantees or other similar business practices which are prescribed in the regulations made under this Act in selecting prospective tenants.

The regulations related to subsection 21(3) permit landlords to use, in the manner prescribed by the *Code* and regulations, income information, credit checks, credit references, rental history, guarantees or other similar business practices for selecting prospective tenants. With respect to the use of income information, Reg. 290/98 under the *Code* permits landlords to request income information from a prospective tenant only if the landlord also requests credit references, rental history, and credit checks, and to consider income information only together with all the other information that the landlord obtained. The subsection and regulations do not allow a landlord to engage in adverse effect discrimination or to refuse to rent to someone because of an enumerated ground under the *Code*.[80]

An individual who believes his or her rights have been violated may choose to make a complaint under the *Code*. A person cannot be punished or threatened with punishment for exercising these rights. Any attempt or threat to punish someone for exercising their human rights is called a "reprisal" and is prohibited under section 8 of the *Code*.

Types of Rental Housing Discrimination

Discrimination in rental housing can take various forms. One does not have to show that the discrimination was deliberate, malicious or even intentional. Even actions that are unintended or comments that are "only a joke", are prohibited if they are offensive and discriminatory based on a ground in the *Code*.

Equal treatment with respect to rental housing accommodation offers protection in a broad range of situations. The right to be free from discrimination in housing includes not only the right to enter into an agreement and occupy a residential dwelling, but also the right to be free from discrimination in all matters relating to the accommodation.

For example, discrimination because of prohibited grounds under the *Code* may occur in a number of situations:

- Differential treatment in the application process (*e.g.* screening out an applicant on the basis of a racialized name)
- Outright denial of accommodation (*e.g.* refusal to rent to someone with children)

- Differential treatment relating to the statutory obligations of a landlord during occupancy (*e.g.* refusal to allow a tenant to sublet, refusal to do required repairs) that can be tied to a *Code* ground
- Differential treatment with regard to the amenities associated with some accommodation (*e.g.* inaccessible recreational facilities)
- Negative impact as a result of a seemingly neutral rule (*e.g.* an inflexible "no pets" policy that impacts on a person with a disability who uses a service animal)
- Differential treatment as a result of association[81] (*e.g.* refusing to rent to someone because he or she is in an interracial relationship)

Sometimes a housing provider discriminates through another person. For example, a building manager who instructs her superintendent not to rent to people of a particular ethnicity because their food "smells too much" would be engaging in discrimination. The manager could also be named in a human rights complaint because she used the superintendent indirectly to discriminate against people based on their ethnic origin.

Discrimination exists not just in individual behaviour but can also be systemic or institutionalized. Systemic or institutional discrimination is one of the more complex ways in which discrimination occurs. Housing providers have a positive obligation to ensure that they are not engaging in systemic or institutional discrimination. Systemic discrimination consists of patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization, and which create or perpetuate a position of relative disadvantage for persons identified by the *Code*. These may appear neutral on the surface but, nevertheless, have an exclusionary impact on *Code*-identified persons.[82]

The Commission has heard about a number of common rental policies and practices among housing providers that create systemic barriers for individuals and families attempting to access housing. For example, the use of minimum income criteria by housing providers will, in many cases, have a discriminatory impact on many individuals protected by the *Code* who tend, disproportionately, to have low incomes.[83]

Sometimes a rule or practice unintentionally singles out particular people and results in unequal treatment. This type of unintentional discrimination is called "constructive" or "adverse effect" discrimination and may create significant systemic barriers. For example, a landlord might have a rule that no pets are allowed in an apartment building. This rule would have an adverse effect on tenants who require "service" dogs to help them in their mobility, such as a blind person who uses a seeing eye dog.[84]

Duty to Accommodate

Under the *Code*, housing providers have a duty to accommodate the *Code*-related needs of tenants, to ensure that the housing they supply is designed to be inclusive of persons identified by *Code* grounds, and to take steps to remove any barriers that may exist, unless to do so would cause undue hardship. Costs will amount to undue hardship if they are quantifiable, shown to be related to the accommodation, and so substantial that they would alter the essential nature of the enterprise or so significant that they would substantially affect its viability.

If a person identified by *Code* grounds has a need which prevents or impedes access to housing, he or she should identify this need or barrier to his or her landlord or housing provider. A landlord or housing provider must then make efforts to accommodate these needs up to the point of undue hardship.

The duty to accommodate is comprised of three principles:

1) respect for dignity,
2) individualization, and
3) integration and full participation.

Respect for Dignity
Dignity will include consideration of how accommodation is provided and the individual's own participation in the process. Housing providers should consider different ways of accommodating persons identified by *Code* grounds along a continuum, ranging from those ways that are most respectful of privacy, autonomy, integration and other human rights values, to those which are least respectful of those values.

Individualization
There is no set formula for accommodating individuals protected by the *Code*. Each person's needs are unique and must be considered afresh when an accommodation request is made. While some accommodations may meet one person's needs and not another's, housing providers will likely find that many of the accommodations that they implement will benefit large numbers of people.

Integration and Full Participation
Accommodations should be developed and implemented with a view to maximizing a person's integration and full participation. Achieving integration and full participation requires barrier-free and inclusive design and removal of existing barriers. Where barriers continue to exist because it is impossible to remove these barriers at a given point in time, then accommodations should be provided to the extent possible, short of undue hardship.

Housing providers should incorporate the principles of universal design when they are developing and constructing housing, and when they are designing housing policies, programs, and procedures. New barriers should never be created in the construction of new facilities or in the renovation of old ones. Rather, design plans should incorporate current accessibility standards such as the Canadian Standards Association's Barrier-Free Design[85] and the Principles of Universal Design.[86] Not only will this type of pre-planning make premises attractive to a larger pool of prospective tenants, it will decrease the need to remove barriers and provide accommodations at a later date.

There are various ways in which a housing provider may be called upon to accommodate the *Code*-related needs of an individual. Persons with disabilities, older persons, families and others may have specific requirements that necessitate accommodation in the housing context. Concrete examples will be discussed in the following sections dealing with these specific grounds.

Housing providers may also contravene the *Code* if they do not provide accommodations in a timely manner. For example, in *Di Marco* v. *Fabcic*[87], the respondent landlord agreed to build a ramp and railing for the complainant (a woman with a disability) before she moved in. However, the respondent did not complete the ramp and railing in time for the closing date so the rental agreement fell through. The Tribunal found that although the respondent did not intend to discriminate against the complainant, the effect of his action did so.

Prohibited Grounds of Discrimination

The *Code* protects against discrimination in rental housing on the following grounds:

- Race
- Colour
- Ancestry
- Creed (religion)
- Place of Origin
- Ethnic Origin
- Citizenship
- Sex (including pregnancy, gender identity)
- Sexual Orientation
- Age
- Marital Status
- Family Status
- Disability
- Receipt of Public Assistance

Intersectionality

In recent years, human rights analysis has evolved to take into account the context in which discrimination occurs. Under the *Code*, individuals are protected from discrimination and harassment on the grounds listed above. However, there is an increased recognition that discrimination is often based on more than one ground, and that these grounds may intersect thus producing unique experiences of discrimination.[88]

The Commission has explored this "contextualized" or "intersectional" approach to discrimination analysis at length in its Discussion Paper entitled *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims*.[89] It is the Commission's view that a contextual approach is needed in order to fully appreciate and do justice to the complex and multifaceted ways in which many people experience discrimination in the area of rental housing accommodation.

The phenomenon of intersectionality is frequently evident in complaints of discrimination in the area of rental housing accommodation. Often, tenants will experience differential treatment based on more than one ground, and these grounds will play off one another. For example, a young lone mother in receipt of public assistance who is looking for rental housing could potentially experience discrimination on the basis of her gender, age, family status and receipt of public assistance. If she is a racialized person and/or if she has a disability, she might experience discrimination on these grounds as well.

While the following sections discuss each *Code* ground individually, it is important to be mindful of the potential for more than one ground to be at issue simultaneously, and for these grounds to intersect. As such, this Paper highlights some of the more common intersections of grounds, where appropriate.

Race and Related Code *Grounds*

In addition to race, the *Code* prohibits discrimination in rental housing on several related grounds, as outlined above. These grounds include primarily the grounds of colour, ethnic origin, ancestry, place of origin, citizenship and creed (religion).

Depending on the circumstances, a human rights complaint of discrimination based on race may cite race alone or may include one or more related ground(s). However, as a social construct, the ground of race is capable of encompassing the meaning of all of the related grounds, and any characteristic that is racialized[90] and used to discriminate.

Racial discrimination in rental housing may take a variety of forms. It is likely that the most common problem that racialized persons continue to face is the denial

of opportunities to apply for rental housing or to view properties. In this regard, landlords may use subtle screening methods to bypass certain individuals in the tenant selection process. Racialized persons may be advised that an apartment has already been rented only to have a White friend inquire about the availability of the accommodation and be told that it is still available.

There are several human rights cases in Ontario that have dealt with this type of racial discrimination. For example, in *Richards* v. *Waisglass*[91], a Board of Inquiry found that the respondent discriminated against the complainant, a Black woman, because of her race when he refused to rent her an apartment. When the complainant and the respondent met, the respondent appeared reserved, refused to take any information from her and stated that he wished to keep showing the apartment to other prospective tenants. When the complainant's friend, a White woman, went to see the apartment at the complainant's request, she was greeted warmly and was offered the apartment by the respondent. The respondent claimed that the reason he had acted differently with the complainant was because he had been tired the day they met; had thought that another person was going to take the apartment; and, had judged from the complainant's behaviour that she appeared "gregarious" and might have parties. The Board found that the respondent could not have come to a reasonable conclusion that the complainant would be loud and have noisy parties during their brief encounter and concluded that he had decided it was unlikely that the complainant would be financially stable and would likely have parties. The Board found that both assumptions were based on negative stereotypes about Black people.[92]

One of the ways in which researchers have attempted to gauge the extent of racial discrimination in rental housing is through auditing studies.[93] These studies have been conducted extensively in the United States since the 1970s. For example, in the 1970s and 1980s, the U.S. Department of Housing and Urban Development backed several broad housing audits that produced significant evidence of discrimination toward and differential treatment of racialized persons across major U.S. cities. For instance, Black and Hispanic auditors posing as prospective apartment renters were shown 25 percent fewer units than White auditors with comparable income qualifications.[94]

Researchers in urban Philadelphia conducted a large-scale telephone audit in 1999 to compare the experiences of male and female speakers of "White Middle-Class English", "Black Accented English", and "Black English Vernacular" when they sought to rent an apartment. The researchers' hypothesis was that racial discrimination in the rental housing market has become extremely subtle and covert. The authors relied on socio-linguistic research that shows that individuals are able to make fairly accurate racial attributions on the basis of linguistic cues alone. Therefore, landlords are able to screen out prospective tenants by simply saying, after hearing the tenant speak, that the apartment is "already rented". This practice has been referred to as "linguistic profiling."[95] Moreover, in an age

of sophisticated technology where most individuals have access to voice-mail messaging and/or call display features, landlords, if so inclined, are able to screen out prospective tenants, for example based on an accent or a name, without ever needing to have any personal contact with them. Based on a large number of carefully controlled telephone inquiries, the audit found "clear and often dramatic evidence of phone-based racial discrimination." In particular, the researchers concluded that:

> Compared with whites, African-Americans were less likely to get through and speak to a rental agent, less likely to be told of a unit's availability, more likely to pay application fees, and more likely to have credit worthiness mentioned as a potential problem in qualifying for a lease. These racial effects interacted with and were generally exacerbated by gender and class. Lower-class blacks experienced less access to rental housing than middle-class blacks, and black females experienced less access than black males. By far the most distinguished group, however, was lower-class black females. Across all measures, female speakers of Black English Vernacular consistently fared the worst. As a result of this unusually intense discrimination, poor black women in Philadelphia are forced to spend far more of their time and put in much greater effort making phone calls just to reach prospective landlords. They experience by far the lowest probability of making contact and speaking with a rental agent, and even if they get through, they face the lowest likelihood of being told of a unit's availability and the highest chance of paying an application fee.[96]

Comparable audits conducted in Canadian cities, albeit on a smaller scale, have revealed similar themes. These audits indicate that individuals from Black and Aboriginal communities, in particular, are subjected to discriminatory treatment when seeking to rent housing.[97]

There has also been an increase in discrimination against persons identified as, or perceived to be, Muslim, Arab and South Asian since September 11, 2001. The Commission has heard several reports of individuals being subjected to Islamophobia[98] by housing providers when attempting to secure rental accommodations.

Racial discrimination in rental housing accommodation is not just about the denial of access to housing opportunities. Racialized tenants may experience unequal access to housing-related services or may otherwise be subjected to differential treatment throughout the course of their tenancies. For example, tenants may be subjected to substandard living conditions or a failure to carry out repairs. In *Ontario (Human Rights Comm.)* v. *Elieff*[99], the Divisional Court reversed a finding by a Board of Inquiry that found that no discrimination had taken place against the complainant in her tenancy. The complainant, a woman of Cambodian ancestry, alleged that her landlord had provided substandard

maintenance of her apartment building to both herself and other tenants of Asian ancestry. Further, she alleged that he had discriminated against them by making derogatory comments about Asians in a newspaper article. The Board found that while the lack of water, broken windows and appliances, cockroach invasions and raw sewage on the property constituted substandard conditions, a successful complaint could not be made out for discrimination or harassment based on race since these conditions affected both non-Asian tenants as well as Asian tenants. It also gave little weight to the comments the landlord had made about Asians. The Board did, however, award compensation for reprisal actions taken by the respondent after the complainant had launched an action. On appeal, the Court upheld the reprisal judgment but reversed the finding that there had been no discrimination towards the complainant. The Court found that the derogatory remarks made about Asians resulted in differential treatment for members of that group, even though all of the tenants of the building were subjected to the same deplorable living conditions. It held that a poisoned environment had been created, which was a violation of the *Code*.

Racialized tenants may also be subjected to unequal rental requirements, particularly in a low vacancy rental climate. For example, landlords may attempt to charge more than the legal rent for a rental unit, or they may require that a tenant pay "key money," which is an illegal one-off extra payment requested of the tenant by a landlord in order to secure a unit.

Discrimination may also occur as a result of issues being made about the cultural practices of racialized tenants. For example, cooking odours have been the subject of two Tribunal decisions. In *Fancy* v. *J & M Apartments Ltd.*[100], a Tribunal found that South Asian tenants were denied an apartment because of stereotypes regarding cooking odours. In *Chauhan* v. *Norkam Seniors Housing Cooperative Association*[101], the complainant was found to have cooked foods in her home that were an expression of her ethnicity and ancestry which produced odours. She experienced differential treatment when she was ordered to cease producing these odours or face eviction. The right to express and enjoy one's ethnicity and ancestry was found to be central to one's dignity. Moreover, the landlord was not found to have a reasonable and *bona fide* justification for its conduct.

Racialized tenants may also experience harassment after a tenancy has been granted. In *King* v. *Bura*[102], a Tribunal found that the respondent owners of a shared house harassed and discriminated against the complainant for several years, which had a serious effect on him both emotionally and physically. The Tribunal accepted the complainant's testimony that the respondents uttered several abusive racial slurs, some of which were on tape, harassed him after he was evicted and accused him of being a pedophile. The Tribunal was satisfied that this behaviour constituted discrimination and that it created a poisoned environment for the complainant.[103]

Tenants may also be subjected to discriminatory treatment due to their association with a racialized person.[104] For example, in *John* v. *Johnstone*[105], a housing provider was found to have breached the *Code* when he evicted his tenant, a White woman, after she had a Black friend over for dinner. In *Hill* v. *Misener* (No. 1)[106], a more recent case from Nova Scotia, a Board of Inquiry found that the respondent had discriminated against the complainant by making it a condition of occupancy that she not associate with "coloured" people. The complainant, a White woman with two bi-racial children, was deeply offended, and even though she did not disclose to the respondent that she could not rent the apartment because of her family, the Board found that discrimination had occurred and awarded compensation.

Aboriginal Canadians

While the Aboriginal population is subjected to many of the same experiences as other racialized groups in the rental housing market, this group also seems to encounter unique and distinct difficulties when attempting to secure rental housing. It has been observed that:

> Aboriginals and the Aboriginal homeless are easy targets of discrimination in the housing market. There is a common perception that Aboriginals on the street are all 'drunks.' Perceptions can discourage landlords from renting to needy Aboriginal tenants... There are Aboriginal males and females who fall into the hard-to-house category. They face particular difficulties in locating housing, and many never really succeed or are evicted. In most cases, needy Aboriginal families and individuals do not have the financial resources to secure adequate housing.[107]

In *Flamand* v. *DGN Investments*[108], a Tribunal found that the complainant was discriminated against because of her Aboriginal ancestry and family status. After the complainant had viewed an apartment, she contacted the respondent owner to tell him that she wished to rent it and set up an appointment to give him the deposit. When the respondent realised that she was Aboriginal instead of French-Canadian as he had assumed from her name, he asked her who the apartment was for and then commented that, "once you rent to a couple of Natives, fifteen Indians come behind"[109]. He then informed her that he had to show the apartment to other people and would need references. When she contacted him later to provide the references, he avoided her phone calls and then informed her later that he was looking for a married couple to rent it instead. The Tribunal recognized the intersectional nature of the case and found that the respondent had based his decision not to rent to the complainant on the characteristics he attributed to Aboriginal people, in combination with his stereotypical views of lone mothers as being unable to shoulder childcare responsibilities alone.

In 2001, Aboriginal households living in Canada's Census Metropolitan areas were over 50 percent more likely to be in core housing need than the average household. This was an improvement from 1996 when they were 80 percent more likely to be in core housing need.[110] However, Aboriginal households are still much more likely to live in dwellings that are overcrowded and in inadequate condition.[111] The CMHC has stated that Aboriginal groups are subjected to particular disadvantage with an urban poverty rate more than twice the national average.[112] In the worst case scenarios, homelessness is the result.

New Canadians

Access to acceptable rental housing is a crucial step in the adaptation process for new Canadians. Housing is a portal through which one may access a whole range of other essential resources, including language training, employment opportunities and schooling. For this reason, housing is often used as a gauge by which to assess the degree to which new Canadians have adjusted successfully in their new homeland.[113]

In addition to facing racial discrimination, new immigrants and refugees must cope with numerous barriers relating to their citizenship status in the area of rental housing accommodation. New Canadians often do not know their rights under provincial or federal law, and may be too intimidated to speak out if they have been taken advantage of.

According to Statistics Canada, seventy-five percent of new immigrant households settling in Canada use the rental market to satisfy their housing needs. At the time of their arrival, many in these households do not possess the employment, savings and/or credit rating required to purchase property.[114]

Housing workers have consistently complained of landlords asking newcomers to pay their rent up to twelve months in advance, despite such practices being illegal.[115] Some have speculated that the practice of requesting unaffordable deposits may in itself be a tactic to deter tenants that a landlord does not deem "desirable". The Commission has also received complaints from recent immigrants and refugees who have been asked to provide exorbitant security deposits in order to secure rental housing.[116]

Other obstacles include having to meet rental criteria that disadvantage newcomers. For example, new Canadians will generally not have rental or employment histories, credit ratings or landlord references in Canada. In *Ahmed v. 177061 Canada Ltd.*, a Board of Inquiry found that even though the *Code* permits landlords to request income information, rental history and credit checks and references under certain circumstances, the landlord's tenant selection policy was discriminatory in that it assumed a connection between the absence of a credit rating and the likelihood of a rental default.

According to a Statistics Canada report, many new Canadians are not able to access acceptable housing and end up as renters in core housing need. There are several possible explanations for this. A study conducted on Africans who had recently immigrated to Calgary concluded that discrimination was a major obstacle to finding acceptable housing.[117] Another explanation may be that new Canadians tend to settle in urban areas where the cost of rental housing is particularly high. For example, the number of immigrants arriving in Toronto between July 1, 1996 and June 30, 2003 was 661,850. This number comprises 43.9 percent of the Canadian total.[118] In 2001, 43.5 percent of recent immigrant households living in Toronto were in core housing need.[119]

Statistics Canada and the CMHC have reported that not only are new Canadians at high risk of being in housing need, they are also more than twice as likely as non-immigrant households (not including Aboriginal households) to live in substandard housing conditions (*e.g.* in overcrowded housing or in housing in need of major repairs).[120]

Sex

Statistics Canada and the CMHC report that women living alone are at high risk of being in core housing need. In 2001, for example, of the women living alone in Canada's Census Metropolitan Areas, 33.8 percent were in core housing need. One of the main reasons for this is the high incidence of very low incomes affecting this group of renters. Women are frequently unemployed, employed part-time, or out of the labour force altogether and, in many cases, spend more than half of their incomes on housing.[121] This situation is frequently exacerbated by the discrimination that many women face both in accessing and occupying rental housing. While both men and women may be subjected to sex discrimination, it is typically experienced by the latter.

Due to ongoing gender inequality in society, there may be other challenges that women face in relation to rental housing. As one organization has observed:

> Women assume disproportionate responsibility for dealing with needs which may suddenly arise from illness and disability within the immediate or extended family. Women experience dramatic income loss after separation (an average 23% decrease in income while men experience a 10% increase). On divorce, women who are sole support mothers have an average 33% decrease in household income. Pregnancy and care of young children often results in interruptions in earnings.[122]

All of these factors will have an impact on a woman's ability to access acceptable rental housing.

Sex discrimination in the area of rental housing may occur in a number of different ways. For example, women may be subjected to gender-based

stereotypes in their pursuit of housing accommodation. In *Conway* v. *Koslowski*[123], an Ontario Board of Inquiry found that the respondent discriminated against the complainant by refusing to rent a house to her in part because there was no man in her family to do the yardwork. The Board rejected the defence that the landlord's advancing age and ethnic background were reasons for his refusal to consider the complainant on her own merits and found that the respondent had made his determination regarding the necessity of a man in a potential tenant's family long before he had even met the complainant.

There have also been cases where men have been discriminated against based on negative gender stereotypes. For example, in *Leong* v. *Cerezin*[124], a B.C. Council found that the complainant was discriminated against by the respondent when he was refused occupancy of a suite because, according to the building manager, the owner preferred female tenants. Ultimately, the apartment was rented to a female for the same occupancy date the complainant had requested and for a lower rent.

Women in abusive relationships or attempting to leave abusive relationships may experience particular challenges in the rental housing market. As one organization notes: "Domestic violence and sexual assault may suddenly create housing needs that were not anticipated a few months earlier, and may suddenly render emergency housing options or shared accommodation untenable."[125] In addition, a woman may face eviction because of her abusive partner's behaviour, for example because of complaints of noise created by the abuse or due to police involvement in the domestic violence. In attempting to leave an abusive situation, a woman may not be able to get a good reference from her landlord due to her spouse's conduct. When looking for new housing accommodation, she may face discrimination if she has children, or is in receipt of public assistance, and she may be asked for an abnormally large monetary deposit if she does not have her own credit history or has a negative credit history. Many women return to abusive relationships because they have no other place to go.[126] The jury in the Coroner's Inquest into the murder of Gillian Hadley by her former husband recognized the key role of the lack of affordable rental housing alternatives in the ongoing exposure of Gillian Hadley to her ex-husband. The jury made a number of recommendations aimed at increasing the access of women and children to affordable rental housing.[127]

Women will often experience sex discrimination in combination with discrimination on one or more *Code*-protected ground(s). For example, a lone woman with children may be denied a housing opportunity because a landlord has views about lone mothers not being desirable tenants based on negative stereotypes.[128] A woman may be denied a housing opportunity both because of her sex and, by association, her perceived financial situation. For example, in *Turanski* v. *Fifth Avenue Apartments*[129], the B.C. Human Rights Council found that the respondent discriminated against the complainant based on sex because she was employed as a waitress and he assumed that this traditionally female

occupation would pay such a low salary that it would prevent her from being able to make her rent payments.

Young women are at an increased risk of living in poverty and in a state of homelessness. Recent studies show that women between the ages of 15–24 increasingly have low incomes and face barriers to housing by the use of minimum income criteria in rental housing. Similarly, young women are at a disadvantage by not yet having a credit history, significant employment experience or previous landlord references.[130] While young men may experience similar challenges in the rental housing market, young women are at an increased disadvantage due to their vulnerability to sexual harassment and other forms of violence against women.

Older women are also vulnerable to housing insecurity. Like young women, they may, due to life circumstances and years spent cohabiting with (usually male) homeowners, be unable to provide independent credit and reference information when their life circumstances change and they are looking for housing on their own. Older women are also much more likely to live in poverty. Statistics Canada reported that in 1997 approximately 50 percent of lone women aged 65 years and older were living in low income circumstances.[131] Lesbian women, either living alone or in same-sex partnerships, are also frequently subjected to discrimination in the rental housing market.

Requirements for rental and employment histories are also likely to have an adverse effect on women who have taken time out of the workforce to raise children, provide care-giving for others, who are leaving abusive relationships or otherwise attempting to establish and support themselves independently.

According to CERA, Aboriginal women have the highest incidence of poverty in Canada, more than twice the rate of non-Aboriginal women.[132] Aboriginal women are, therefore, at a heightened risk of experiencing discrimination on a number of grounds when they seek accommodation in the rental housing market.

Aboriginal women have also experienced discrimination when they have attempted to find housing on reserves. For example, in *Raphael* v. *Conseil Des Montagnais du Lac Saint-Jean*[133], a federal Tribunal found that a band council had discriminated against four native women on the basis of sex by denying them housing and/or other services on the reserve. The four women had lost their Indian status under the *Indian Act*, but the passage by the Federal Government of Bill C-31 in 1985 restored their status. In September 1985, the Band Council imposed a moratorium on providing services to "Bill C-31 Women" because the Band anticipated the arrival of many new people on the reserve. The Tribunal found the Band's actions to be discriminatory. The complainants were refused such services as building permits, hunting permits, language courses, housing, and permission to live on the reserve.

At present, when there is a breakdown of a marriage or common law relationship on reserve, there is no legal provision for an equitable division of the matrimonial real property, that is the family home and the land on which it is situated. Therefore, Aboriginal women and their children have no legal claim to occupy the family residence. They may have to leave their home and, due to housing shortages, may be forced off reserve into urban housing markets where they may be highly vulnerable to rental housing discrimination.[134]

Women from other racialized groups also encounter many barriers when they attempt to access rental housing. Racialized women are nearly twice as likely as non-racialized women to have low incomes.[135] As a result, they may be subject to "triple" discrimination, that is, discrimination on the basis of sex, race, and, possibly, receipt of public assistance.

Women with disabilities are also more likely to live in poverty and to experience discrimination on an intersection of grounds.

Sexual Harassment

All Ontarians have the right to be free from sexual harassment in the occupancy of housing accommodation. While some men do experience sexual harassment in rental housing, it is women who are most often affected. Sexual harassment includes unwelcome sexual contact and remarks, leering, inappropriate staring, unwelcome demands for dates, requests for sexual favours and displays of sexually offensive pictures or graffiti. A person has the right to be free from unwelcome advances or requests for sexual favours made by a landlord, superintendent, an employee of the facility, another person in a position of power, or another tenant.

The comments or conduct do not have to be sexual in nature. Someone may tease or bother a woman because of gender-based ideas about how men or women "should" look, dress or behave.

Transgendered persons are protected in housing accommodation from degrading comments, insults or unfair treatment because of gender identity.

According to the National Working Group on Women and Housing, women who depend on rent supplement programs and who live in private housing units are especially vulnerable to threats and sexual harassment from their neighbours or landlords.[136]

One study found that the type of harassment experienced by a female tenant in housing may range from unwanted prying into her personal life, unannounced visits to her unit when she is not home, refusals to make necessary repairs, threats to cut services, and threats of eviction.[137] In *Reed* v. *Cattolica Investments Ltd*[138], a respondent sexually harassed a tenant who was also his

employee. When the complainant was forced to resign after being subjected to weeks of verbal and physical sexual harassment, the respondent then increased her rent without notice, threatened to evict her and repeatedly subjected her to sexual threats and obscenities during uninvited visits to her apartment. An Ontario Board of Inquiry found that the respondent had violated the tenant's right to equal treatment and had subjected her to a reprisal.

The typical power imbalance which exists between landlords and tenants is often heightened by gender inequalities. It is hard to overstate the impact of being sexually harassed in one's home. As one theorist has observed, "the interaction of private property relations and gender relations take on new meanings when coercive sexuality invades the privacy of women's homes, homes that frequently are the private property of men".[139] It is quite possible that women underreport such incidents due a fear of retaliation by the harasser.

Marital Status

Marital status is broadly defined in the *Code* as the status of "being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage". In the case of *Miron* v. *Trudel*,[140] the Supreme Court of Canada stated the following about the situation of unmarried persons in relationships:

> Persons involved in an unmarried relationship constitute an historically disadvantaged group. There is ample evidence that unmarried partners have often suffered social disadvantage and prejudice. Historically, in our society, the unmarried partner has been regarded as less worthy than the married partner. The disadvantages inflicted on the unmarried partner have ranged from social ostracism through denial of status and benefits.

There have been a number of cases dealing with discrimination on the basis of marital status in the housing context. Often, these cases deal with situations in which single individuals are seen as less preferable or are rejected outright in lieu of married couples. For example, in *Vander Schaaf* v. *M & R Property Management Ltd.*[141], the complainant alleged that her rental application was refused by the superintendent because of a preference for married couples. Even though the complainant and her roommate earned enough together to make the rent-to-income ratio cutoff of 25 percent, neither could maintain that percentage independently. However, there was evidence to show that spousal co-tenants would have been treated differently since it would have been their combined and not individual incomes which would have been considered. An Ontario Board of Inquiry found that the respondents had directly discriminated against the complainant.[142]

A parent who is unmarried or divorced will often experience compounded disadvantage because of the continuing social stigma associated with being a

lone parent, as well as the added financial, practical and emotional responsibilities of solo parenting. Lone mothers are disproportionately likely to experience poverty and to find themselves shut out of the rental housing market. For example, in *Booker* v. *Floriri Village Investments Inc.*,[143] an Ontario Board of Inquiry found that the complainant was discriminated against because she was a single parent and the superintendent expressed a preference for married couples instead. There was evidence to indicate that the property was viewed as a "family building" and management did not consider lone parent households as constituting a "family".

In *Raweater* v. *MacDonald*[144], the complainant, a lone mother of Aboriginal ancestry, alleged that the respondent criticized the behaviour of her children and asked her about the whereabouts of their father. He stated that her children would be "less disturbed" and "more controllable" if their father were present. The respondent also periodically invaded her privacy and once made an offensive comment to her regarding her Aboriginal heritage. A B.C. Tribunal concluded that, in isolation, these comments might not have been sufficient to conclude that the complainant had been discriminated against on the grounds of marital status, family status and Aboriginal ancestry individually. However, when they were considered along with his other actions, the Tribunal found that the respondent treated the complainant in a disdainful manner because of the combination of stereotypical views that he held about Aboriginal persons and unmarried mothers.

The particular vulnerability of sole-support mothers in receipt of public assistance was recognized by the Ontario Court of Appeal in *Falkiner* v. *Ontario (Ministry of Community and Social Services)*.[145] The Court found that there was significant evidence of historic disadvantage and continuing prejudice against this group, noting the resentment and anger they face from others in society who see them as "freeloading and lazy", and the history of stigmatization, stereotyping and offensive restrictions on their personal lives.

Other cases have dealt with situations in which common-law couples are discriminated against in favour of married couples.[146] For example, in *Matyson* v. *Provost*[147], the respondents would not rent to common-law couples because it offended their religious beliefs. A Saskatchewan Board of Inquiry found that while the respondent's freedom of religion was protected under the *Charter of Rights and Freedoms* and the Saskatchewan *Human Rights Code*, the respondents had a responsibility to provide housing accommodations in a non-discriminatory manner once they made it available to the public.

Family Status

Section 10(1) of the *Code* defines "family status" as the status of being in a parent and child relationship. Complaints regarding discrimination on this ground range from individuals being denied rental housing accommodation formally or

informally because they have or will have children, to prospective or current tenants receiving discriminatory treatment because of the particular form or composition of their family.

Recent years have seen increasing diversity in the nature of the Canadian family. The numbers of lone parent and blended families continue to grow. As well, it is only recently that any recognition has been given to families headed by same-sex parents. Housing providers have not necessarily adjusted their policies, programs and practices to deal with these new realities.

Numerous reports detail the lack of access to safe, affordable, adequate rental housing for families with children, particularly female-headed lone parent families. According to the CMHC, 42 percent of lone parents are in core housing need.[148] The Golden Report stated that families represented 46 percent of the people using hostels in Toronto in 1996. At that time, 19 percent of the homeless population in Toronto, or 5,300 homeless people were children. Of the 100,000 people on the waiting list for subsidized housing, 31,000 were children.[149]

Lack of access to adequate, affordable housing has long-term consequences. For example, children in families spending the majority of their income on rent are at a higher risk of malnutrition and respiratory and other diseases.[150] Links have also been made between housing and neighbourhood characteristics and children's educational achievements. Children's socio-emotional health is strongly associated with housing quality.[151] A recent study found that the deteriorating housing circumstances in Toronto are a significant factor in the admission of children to the care of the Children's Aid Society: families and children who are clients of the CAS in Toronto face substantial obstacles to obtaining adequate and appropriate housing, and for some this affects their ability to care for their children.[152]

In the most extreme circumstances, families find themselves living in shelters. Discrimination against lone female parent-headed families, in particular, can easily result in an entire family becoming homeless. Shelter surveys indicate a dramatic increase in usage by women with children, particularly Aboriginal and Black women.[153] Lone parent families enter the shelter system at twice the rate of two-parent families.[154]

In many, if not most, cases, an individual will experience discrimination on the basis of family status along with one or more *Code*-protected grounds and these grounds may intersect, producing unique experiences of disadvantage and discrimination. Since women continue to be the primary caregivers of most families in Ontario[155], discrimination on the basis of family status will very often include a gender component. In addition, families with young children may be marginalized in the rental housing market, particularly where family status intersects with marital status, receipt of public assistance, or the race-related grounds of the *Code*. Same-sex couples and gay or lesbian lone parents raising

children may also be subjected to negative attitudes and stereotypes because they do not conform to normative familial models.

It is important to pay particular attention to the complex ways in which family status intersects with the race-related grounds of the *Code*. Negative stereotypes about families take specific forms for various racialized groups. Research that has been done in the area of access to affordable rental housing, for example, suggests that sole-support families from racialized and Aboriginal communities may be the most disadvantaged of all families seeking shelter.[156]

There has been significant litigation regarding family status issues in the area of rental housing, particularly in the Ontario context. As a result, the caselaw in Ontario generally recognizes broad protection in the rental housing context for the parent-child relationship. Beginning with *Fakhoury* v. *Las Brisas Ltd.*[157], tribunals have recognized the rights and importance of families and of the need to protect housing rights. The caselaw has steadily expanded the scope of the family status protection to include denial of housing to a woman because she is pregnant, to combat animus against lone parent families, and to provide protection to families where the parents are not legally married.[158]

Many family status cases deal with systemic barriers encountered by families seeking to access housing. Tribunals have found that the stipulation by landlords of a minimum number of bedrooms based upon the number and gender of the children may have the result of impeding the access of lone-parent families to housing.[159] Tribunals have also found against restricting apartment buildings to "families" where that designation excludes lone parent families or common-law couples.[160]

Some landlords have policies prohibiting tenants from transferring between rental units in the same building. Such policies may have a negative impact on families with children, because their rental housing needs change as their families grow, but they must leave their building in order to accommodate their need for additional space. In *Ward* v. *Godina*,[161] a Board of Inquiry found that "no transfer policies" have an adverse impact on families with children, and violate the *Code*.

Policies regarding the number of occupants per number of rooms or bedrooms may also have an adverse impact on families with children. In *Desroches* v. *Quebec (Commission des droits de la personne)*,[162] the complainant was denied the opportunity to rent the apartment of her choice when the landlord discovered that she was in the process of a divorce, and that her two daughters would be visiting her every Sunday. The landlord had a standing policy not to rent any of his four and a half room apartments to more than two occupants. The Quebec Court of Appeal found that this policy constituted " a very effective anti-child barrier", since the policy had the effect of excluding all children who live with two parents, as well as all lone parent families with more than one child. The policy therefore violated the Quebec *Charter of Human Rights and Freedoms*. The

opposite situation could also raise concerns. For example, a policy that a single person cannot rent an apartment with more than one bedroom may prevent a divorced parent from having his or her children visit and stay overnight.

In a more recent case,[163] a landlord had an informal policy of renting one-bedroom apartments only to couples or singles; two bedrooms to a couple with one child; and three bedrooms to couples with two children. Although he might rent a three bedroom apartment to a person or a couple with three children, he would only do so if the children were very young, and even so the family would have to move to a bigger unit fairly soon. The complainant in this case was a lone mother of three children, who was seeking (and was denied) a three-bedroom apartment. This policy was found to have a discriminatory effect on the basis of family status. Concerns have also been raised with respect to policies that place restrictions on the sharing of rooms by opposite sex siblings, on the basis that such policies may reduce the ability of families with children to access affordable rental housing. These types of policies may have a significant impact on the social and economic rights of families, as they effectively deny access to the type of housing that is affordable for them.

Despite these advancements in the caselaw, however, family status is still among the most commonly cited grounds of discrimination in complaints filed with the Commission regarding housing. A number of reports have indicated that discrimination continues to play a substantial role in determining who gets and is able to keep adequate, affordable rental housing. The Golden Report on Homelessness[164] states that:

> [I]t is not uncommon for families that are staying in shelters or in motels, families with good credit histories and good references, to be refused an apartment by many different landlords. Discrimination can make the housing market impenetrable for those most in need of housing.

This observation is corroborated by the consistent pattern of complaints to the Commission on housing issues. As one report stated, "focussing on the supply of rental housing will not solve the housing crisis if those that most need housing are still turned away by the unchecked discrimination of landlords".[165]

In a recent decision, an Ontario Human Rights Tribunal found that a lone mother was denied the opportunity to rent an apartment after the landlord discovered that she had a child. The landlord stated that he would not rent the apartment to a family with children, and further refused to return the complainant's deposit. The complainant testified that it took her five months to find another suitable apartment: on approximately five occasions she was turned down by landlords who stated that they did not rent to people with children.[166]

A variety of negative attitudes and stereotypes may also be at play behind a refusal to rent to families with children. For example, landlords may refuse to rent

to families with small children on the basis that small children are "noisy" and will disturb other tenants. Landlords insisting that tenants have a "quiet lifestyle" or informing tenants that the building is "not soundproof" are common themes in the rejection of rental applicants with small children.[167] In the course of occupying a residence, families may be subjected to harassment by other tenants and housing providers, and may even be threatened with eviction, due to the normal behaviour of their children. Issues may arise with regard to entire families being evicted due to inappropriate activities engaged in by a child.

The practice of landlords asking the ages of prospective tenants on application forms has been found by the Tribunal to be a *prima facie* act of discrimination on the basis of family status. Where landlords ask such questions, the onus will shift to them to demonstrate that there was in fact no such discrimination:

> [T]here is great merit in the argument of the Commission that a landlord only asks the question as to the age of the prospective co-occupant so he can deny the application if the answer discloses the prospective co-tenant to be a child or perhaps an elderly person. While it might be argued a landlord needs to know the ages of co-occupants in his building in case of fire and for numerous other reasons, such information can be acquired by the landlord after apartment units have been rented.[168]

The Commission has also received complaints where the actions of the landlord are based, not on the presence of children *per se*, but on the number of children in the family. The Commission has considered such complaints to fall within the ground of family status.

The Commission is concerned about the widespread practice of designating rental apartments and other housing as "adults only" or "adult lifestyle communities". It is common to see rental housing advertised as "adult lifestyle", and the Commission has referred for Tribunal hearings a number of complaints where applicants with children have been refused tenancy in such housing. Such landlords are, in effect, advertising their intent to discriminate against families with children.[169]

Discrimination may also be based on specific stereotypes or negative attitudes about lone mothers, families on social assistance, gay or lesbian-headed families, or families from racialized communities.

Housing providers have a duty to accommodate housing needs related to family status up to the point of undue hardship. The Commission has heard reports that families have been barred from rental housing because of concerns for children's safety. There may, on occasion, be situations where some alterations may be required to housing to accommodate the needs of children. For example, it may be necessary to place safety devices on windows or balconies in high-rise apartments. Such steps may be necessary accommodations on the part of a

housing provider. Families with children should not be barred from rental housing because such reasonable steps are required.

The Commission has also heard reports that families are being evicted from their apartments because of the noise of children crying. Life in apartment-type housing inevitably involves some exposure to the noises and activities of one's neighbours. Many normal activities cause noise – listening to music or socializing, for example. Children, like other tenants, may cause noise as part of their normal activities, such as playing, talking and crying. Noises associated with children's normal activities should not be treated differently from other types of noise that may be experienced when living in close quarters. Nor should the noise normally associated with children be an excuse for refusing to rent to families with children. Where children's noise is genuinely disruptive to other tenants, all parties can work cooperatively to resolve the issue. Parents can take reasonable steps, consistent with good parenting practices, to minimize children's noise. Housing providers also have a responsibility to attempt to resolve matters without evicting families. For example, extra soundproofing for an apartment could be considered, or moving a family to a different apartment.

Sexual Orientation

The *Code* provides that every person has a right to equal treatment in the area of housing accommodation without discrimination because of sexual orientation. Landlords and other housing providers must ensure that they are not denying housing to individuals based on their sexual orientation. They must likewise ensure that their treatment of current tenants is non-discriminatory and not influenced by subjective judgements relating to sexual orientation, or negative attitudes about homosexuality and/or towards gays and lesbians.

Housing providers must also address any discrimination or harassment relating to sexual orientation that may arise within their rental housing environment, whether between tenants, or involving agents of the housing provider, or others who are part of the housing environment (*e.g.* contracted maintenance workers). If a housing provider becomes aware of discrimination or harassment, either through a complaint or other means, they must respond appropriately. Housing providers who fail to take steps to address a poisoned environment or a complaint of discrimination or harassment may be found liable.

Gays and lesbians may be subjected to discrimination in rental housing in several different ways. For example, they may be denied the opportunity to view a unit due to their sexual orientation. In a telephone audit conducted in the cities of Windsor and London, Ontario and Detroit, Michigan in the late 1990s, 180 phone calls were made, with half of the callers making simple inquiries about rental unit availability and the other half making similar inquiries, but also making a specific point of disclosing their sexual orientation as either gay or lesbian. To

the latter group, units were significantly more likely to be described by landlords as unavailable.[170]

As one researcher commented, in the case of private rental housing situations,

> It would appear that, despite increased knowledge in society about homosexuality, persons identified in this way still face many of the same rejecting situations they have faced for many years – at least when such rejection is privately expressed, seemingly 'legitimate,' and likely to be assumed by its perpetrator to be undetectable.[171]

The experience of same-sex couples (whether married or living together outside of marriage) or lone gays and lesbians who are parents is also unique. These parents may find themselves bearing the brunt of negative stereotypes, and may face discriminatory treatment because they do not conform to the typical "nuclear family" norm. In some cases, they and/or their children may be subjected to harassment because of their living arrangements.

At this time, there are few reported cases dealing with discrimination and harassment on the basis of sexual orientation in housing. In Ontario, there have only been two cases to date and the complainants in both were unsuccessful.[172] However, this is an evolving area of law and social policy, and in other provinces, successful complaints have been made out.[173]

Age

The *Code* prohibits discrimination in housing accommodation on the basis of age only for persons aged 18 or older.[174] In other words, with the exception of persons who are sixteen or seventeen years old, who have withdrawn from parental control, housing providers are entitled, under the *Code*, to restrict the housing accommodation they provide to minors. It should be noted, however, that a recent Tribunal decision has indicated that the definition of age in the *Code* can be an unjustifiable abridgement of the equality rights of children under the *Charter of Rights and Freedoms*.[175]

In any case, restrictions in housing to children that have the effect of limiting access to housing for their parents may discriminate on the basis of family status. For example, the designation of housing accommodation as "adult lifestyle" would, in addition to banning minors, effectively ban families. Therefore, this type of restriction would be treated as discrimination on the basis of family status. Arbitrary age restrictions should not be used to enforce mere preferences for "child-free" spaces.

Young persons over the age of eighteen may face particular forms of disadvantage in the rental housing market. For example, rent-to-income ratios may have an adverse impact on this group of renters due to their frequently low

incomes. In *Sinclair* v. *Morris A. Hunter Investments Ltd.*[176], an Ontario Board of Inquiry found that the complainants were discriminated against when they were refused rental of an apartment because they could not meet a rent-to-income ratio of 33 percent. The Board accepted expert evidence that rent-to-income ratios discriminate against rental applicants at least up until their mid-twenties. The Board also found that rental policies requiring applicants to have permanent jobs and a minimum tenure with an employer discriminate on the basis of age since employment for younger people is more unstable and of a shorter duration than that of older adults.[177]

Young persons may also be subjected to negative stereotyping. For example, there have been cases that have dealt with negative stereotypes about teenage children. In *Bushek* v. *Registered Owners of Lot SL 1*, a complaint that a family was forced to leave their apartment because it included two teenage children, was ultimately dismissed. However, the Tribunal expressed concerns about the negative attitudes towards teenagers expressed by building management:

> Some of the evidence did suggest that in attempting to balance the interests of its residents, the strata council did not adequately concern itself with the interests of teenagers. Though teenagers were able to use the facilities and participate in events, the security problems appear to have cast a shadow of suspicion over teenagers. The suggestion that they put off prospective buyers and upset the elderly would understandably be offensive. Though these comments may have arisen out of the very real problems the building had experienced with some teenagers, they reflect the type of stereotyping that human rights legislation is designed to prevent.[178]

Older persons also face particular challenges in the rental housing market. Older persons, particularly older women, are at high risk of being in core housing need. In 2001, for example, of older women living alone in Canada's Census Metropolitan Areas, 57.5 percent were in core housing need. Of older men living alone, 44.6 percent were in core housing need. One of the main reasons for this situation is the high incidence of very low incomes affecting these groups of renters. In many cases, older persons are unemployed, employed part-time, or out of the labour force altogether. Further, a large number of individuals in these groups will be dependent on the government for the majority of their household income. The major source of income for over 90 percent of these households was government transfers. The average before-tax income of these individuals was under $15,000, almost half of which was spent on housing.[179]

The *Code* prohibits either direct or adverse effect discrimination in housing.[180] For example, a housing provider should not turn away older persons because it wishes to attract more youthful residents. Similarly, older persons who may be paying lower rents due to longer tenure in their rental unit should not be targeted for eviction by landlords who wish to attract new tenants at a higher rent.

Housing is a critical issue related to quality of life for older persons. In order to maintain their independence and well-being, older persons need housing that is safe, affordable, accessible and adaptable, allowing maximum freedom and continuation of a person's lifestyle. The normal physical changes that occur as people age and the diseases or disabilities that affect some older persons have implications for housing. In designing and building housing for older persons, the aim should be a barrier-free environment, with recognition that barriers are both physical and psychological. This would enable those who may suffer from some degree of impairment to continue to perform the activities of life.

The Commission has recognized that older persons benefit from the support, community and security offered by older persons' housing projects, and the importance of "aging in place". Housing for older persons includes a range of options including rental accommodation, condominiums, retirement homes and care facilities. There can be some overlap between housing and services, for example older persons' residences in which services such as housekeeping, meals or medical assistance are provided.

There are circumstances where housing aimed at the needs of older Ontarians will promote the objectives of the *Code*. Section 15 of the *Code* permits preferential treatment for persons aged 65 and older, and therefore permits housing that is limited to persons over the age of 64. Section 14 of the *Code* permits special programs to alleviate hardship and disadvantage, such as specially designed barrier-free housing projects aimed at older persons with disabilities. Section 18 creates a defence for religious, philanthropic, educational, fraternal or social institutions or organizations that primarily serve the interests of older persons and that provide housing as part of their services.

Older persons may require particular accommodations in order to enjoy housing on an equal basis with other residents. A housing provider has a duty to accommodate the needs and capabilities of older residents, subject to the undue hardship standard. Accommodations may include modifications to a rental apartment, building entrance, sidewalks, parking facilities and common areas. This might include physical modifications such as installing elevators, ramps, visual fire alarms and doorbells for the hearing impaired, different door handles, lower counters, *etc.* It can also require other forms of accommodation such as waiving or changing a rule, providing better maintenance such as more frequent snow removal, or allowing transfer to another unit without penalty. For example, during its consultation on age discrimination, the Commission heard that older persons who become widowed face particular hardship in the form of significant rent increases when they seek to move to a smaller unit that they can better maintain. A possible accommodation in this situation may mean facilitating transfer to another unit in the building without treating the situation as a new lease to which higher rents would apply.

Disability

The *Code* prohibits discrimination in housing accommodation on the basis of disability. Section 10(1) of the *Code* defines disability broadly to include any physical disability, mental disability, learning disability, mental disorder or any injury or disability where benefits are claimed under the insurance plan established by the *Workplace Safety and Insurance Act, 1997*.[181] Section 10(3) also provides protection against discrimination to persons who have had disabilities and who are perceived to have or to have had disabilities.

Persons with disabilities face many challenges in society. Inadequate social supports, insufficient financial assistance, and a lack of appropriate mechanisms to facilitate deinstitutionalization all contribute to the difficulties that many face in their quest to live independently. These challenges are frequently compounded by the numerous barriers faced by persons with disabilities when they attempt to access rental housing.

These barriers can take many forms and often include outright denials of tenancy. For example, in *Yale* v. *Metropoulos*[182], an Ontario Board of Inquiry found that the respondents willfully and recklessly discriminated against the complainant, a blind woman, when they cancelled an apartment viewing without notifying her, later refused to let her enter the unit, and generally treated her rudely. The Board held that a landlord and/or superintendent contravenes the *Code* when he or she refuses to show an apartment to a prospective tenant with a visual handicap and fails to provide a reasonable explanation for this.

Inaccessible buildings and non-inclusive housing design are among the obstacles frequently encountered by persons with disabilities. Housing providers have a duty to accommodate the needs of tenants with disabilities to the point of undue hardship. Accommodations may include physical modifications such as installing ramps and elevators, visual fire alarms and doorbells for the hearing impaired, different door handles, lower counters, *etc.* It can also require other forms of accommodation such as waiving or changing a rule, for example, allowing guide dogs in a building with a "no pets" policy.[183] Housing providers may also contravene the *Code* if they do not provide accommodations in a timely manner.

Often, it is neither difficult nor a major imposition for a housing provider to provide needed accommodations. In *Julie Ramsey* v. *S.W.M. Investments*[184], a tenant alleged discrimination because of disability due to the landlord's lack of designated "handicapped" parking. Under a settlement, the landlord agreed to provide two designated parking spots for tenants, one designated spot for visitors and further designated spots for tenants as required so that each tenant entitled to a spot would have one. The landlord also agreed to maintain the parking spots by clearing snow, sanding or salting the parking spots and the route to the door of the building.

The Ontario *Building Code Act*[185] governs the construction of new buildings and the renovation and maintenance of existing buildings. The Commission has expressed concerns that the accessibility requirements set out in the *Building Code* do not always result in equal access to persons with disabilities as required by the *Human Rights Code*.[186] Many housing providers continue to rely only on the requirements of the Ontario *Building Code* without due consideration of their obligations under the *Human Rights Code*. However, the *Human Rights Code* prevails over the *Building Code* and housing-providers may be vulnerable to a human rights complaint to the extent that their premises continue to fall short of the requirements of the *Human Rights Code*. Reliance on relevant building codes has been clearly rejected as a defence to a complaint of discrimination under the *Human Rights Code*.[187]

The *Accessibility for Ontarians with Disabilities Act*[188] provides a mechanism for developing, implementing and enforcing accessibility standards in order to provide full accessibility for Ontarians with disabilities in goods, services, facilities, accommodation, employment, buildings, structures and premises by January 1, 2025. It should be noted that, under the *AODA*, housing providers will be required to set accessibility standards for persons with disabilities in housing.

Persons with disabilities may be subjected to harassment by housing providers, co-tenants, and others. For example, in *Aquilina* v. *Pokoj*[189], an Ontario Board of Inquiry found that the respondent landlord engaged in a vexatious course of conduct in order to control the life of the complainant, a woman with cerebral palsy, as both a tenant and as an individual. In this case, the respondent was also found to have made verbal slurs regarding the complainant's disability.

Individuals with mental disabilities often face particular challenges in the rental housing market due to negative attitudes and stereotypes. In *Weiher* v. *Polhill*[190], the respondent landlord imposed specific rules on the complainant that were not forced upon anyone else, once he became aware of her mental disability. Under the impression that the respondent did not want her there, the complainant did not move in. The Human Rights Tribunal of Ontario found that there had been discrimination on the basis of the complainant's mental disability and awarded compensation.

People with past or present psychiatric illnesses continue to experience extreme marginalization and discrimination in most social spheres, including rental housing accommodation.[191] In a telephone audit conducted in the cities of Windsor and London, Ontario and Detroit, Michigan in the 1990s, 160 phone calls were made, with half of the callers making simple inquiries about rental unit availability and the other half making similar inquiries, but also making a specific point of disclosing that they were currently seeking psychiatric treatment but would soon require accommodation. To the latter group, units were significantly more likely to be described by landlords as unavailable.[192] The formidable

ostracism to which persons with mental disabilities are subjected in the rental housing market has the potential to, and frequently does, lead to homelessness.

Receipt of Public Assistance

Discrimination on the basis of receipt of public assistance is one of the ways in which people living in poverty are discriminated against in the rental housing market. Despite the fact that the *Code* prohibits a housing provider from refusing to rent to a household that depends on public assistance, the Commission has heard numerous reports that this continues to be a widespread practise in Ontario and individuals continue to file complaints with the Commission on this basis.

When occupying housing, those depending on public assistance are often subjected to differential treatment and rental requirements not imposed on others. For example, they may be asked to arrange for direct payment of government cheques, they may be charged unreasonably large and often illegal rent deposits, and/or they may be subjected to intrusive questioning which violates their privacy and compromises their dignity. Similarly, a housing provider's request for first and last month's rent also has the potential to constructively discriminate against those in receipt of public assistance, as well as other members of disadvantaged groups protected by the *Code*, who frequently have lower incomes and will often be unable to generate such resources.

Those living in receipt of public assistance frequently bear the brunt of negative attitudes and stereotypes. In *Iness* v. *Caroline Co-operative Homes Inc.*[193], a case which dealt with discrimination in accommodation on the basis of receipt of social assistance, Dr. Janet Mosher was called as an expert on discrimination against social assistance recipients. She testified that the most prevalent stereotype about individuals in receipt of public assistance is a lack of work ethic. She also stated that there is a prevalent belief that receipt of assistance is associated with criminal behaviour. She stated that frequently social assistance recipients are portrayed as "fraudsters" who are "lazy, parasitic and irresponsible", and as individuals who have "personal failings, and lack adequate virtue." In the case of lone mothers in receipt of social assistance, she stated that they are often perceived as "promiscuous," and that they are perceived to have formed "deviant family formations, which are inadequate compared to two-parent families." [194] As mentioned previously, the Ontario Court of Appeal has also recognized the particularly harsh attitudes and stereotypes to which sole-support mothers in receipt of public assistance are routinely subjected.[195] Due to this negative stigma, many depending on public assistance will make great efforts to hide their status.

There has been a fair amount of litigation in the Canadian context dealing with discrimination on the basis of receipt of public assistance. Many cases deal with situations where rental housing was denied outright. For example, in *Willis* v. *David Anthony Philips Properties*[196], a Board of Inquiry in Ontario found that the owner

told the complainant that he did not want to rent to her because she was on social assistance. The Board found that wrongful discrimination had occurred. In a 1995 case, *Kostanowicz* v. *Zarubin*[197], a lone mother who was receiving social assistance was also denied an apartment. The Board found that the respondent had violated the *Code* by not renting to the complainant. In a Quebec case, *Drouin* v. *Wittan and Lavalee,*[198] a landlord refused to rent to the complainant because she was poor and her source of income was social assistance, without considering whether or not she was a reliable tenant. The landlord in fact stated that poor people cannot pay their rent. The Tribunal found that exclusions based on low income may constitute indirect discrimination against lone parent families, and the respondents were found to have violated the Quebec *Charter*. In another Quebec case *Laurente* v. *Gauthier*[199] the Board found that the respondent had a policy of not renting to welfare recipients irrespective of their ability to pay the rent. The tribunal found that the respondents had discriminated on the basis of social condition.

Other cases deal with individuals being treated differently during their occupancy of housing due to receipt of public assistance. The case of *Québec (Comm. des droits de la personne)* c. *Coutu*[200] is noteworthy because the Quebec tribunal in that instance awarded the complainants, residents of a private nursing home, more than $2 million in general and special damages. The tribunal found that M. Coutu, the administrator of the nursing home, had violated the economical, physical, psychological and moral rights of residents who were all persons with disabilities in receipt of public assistance. The monthly social assistance allowances of residents had been redirected, and residents were overcharged for services and purchases such as haircuts, clothes, personal hygiene items and recreational activities. Residents were forced to work at the facility without remuneration. Staff were not qualified, verbally abused and humiliated residents, and treated them in ways that did not respect their dignity and privacy.

Still other cases deal with the negative impact of rental housing policies and requirements on people in receipt of social assistance. For example, in *Garbett* v. *Fisher*[201], an Ontario Board of Inquiry found that asking for last month's rent is constructive discrimination against social assistance recipients because they do not receive their money in advance. A case in British Columbia, *Larson* v. *Graham*, reached a similar conclusion.[202]

Inadequate Levels of Social Assistance

The Commission has heard numerous concerns that the Ontario government's level of financial assistance for social assistance recipients is too low and results in constructive discrimination in housing. Individuals have argued that they are denied equal treatment in their attempts to house themselves and their children because of their inadequate income. They have further alleged that the levels of social assistance set by the province have resulted in the exclusion of large families from the rental housing market.

Each month, individuals in receipt of the Ontario Works social assistance program receive a shelter allowance along with a basic needs allowance. As of January 2007, the monthly shelter allowance provided by Ontario Works ranged from $342 for a household of one to $708 for a household of six or more.[203] As is quite well known, these amounts are much less than the current average rent in Ontario, particularly in its cities, and the difference between these amounts creates a "shelter gap".[204] In order to afford rent or a mortgage on a home, families often combine their basic needs and shelter allowance. Despite these efforts, however, many households end up in core housing need.

Incidence of Core Housing Need for Renters in Major Centres in Ontario, 1991-2001 (%)[205]

	1991	1996	2001
Ottawa	21.0	35.2	31.1
Kingston	21.3	39.5	35.4
Oshawa	26.5	36.7	36.6
Toronto	24.3	35.2	35.5
Hamilton	23.4	37.3	34.7
St. Catharines-Niagara	26.6	41.3	37.4
Kitchener	21.6	34.5	28.8
London	23.6	38.7	33.4
Windsor	27.4	37.9	35.1
Greater Sudbury	24.9	40.3	34.9
Thunder Bay	24.9	37.4	37.5

The shelter gap is particularly pronounced for sole support parents who rely on a single income to support their families. For example, in 2003, the maximum monthly allowance for a lone parent with two children under twelve years was $1,086 ($554 shelter allowance and $532 basic needs allowance). If this family rented a two-bedroom apartment in Toronto, they would have approximately $31 left after rent to cover all other needs for the month.[206] Because rent takes up the majority of the assistance received, many sole support parent-led families are turning to food banks and other means to make ends meet. Also, the stress of having to do this every month may hinder their ability to find employment or participate in Ontario Works employment activities.

As of September 2006, over 50 percent of the beneficiaries of Ontario Works were members of lone parent families.[207] For these, and other households in receipt of social assistance, the very low shelter allowances put beneficiaries in the untenable circumstance of having to choose between shelter and the other necessities of life.[208] In many areas of the province, there is simply no adequate

rental housing available to families in the private rental market within the limits of the shelter allowance. This situation can, and does, result in families finding themselves homeless.

International human rights treaty bodies have expressed strong criticisms of Canada regarding the increasing poverty and lack of access to housing among sole support mothers and other women. For example, the March 2003 *Concluding Observations* of the United Nations Committee on the Elimination of Discrimination Against Women expressed serious concern about "the high percentage of women living in poverty, in particular elderly women living alone, female lone parents, aboriginal women, older women, women of colour, immigrant women and women with disabilities, for whom poverty persists or even deepens, aggravated by the budgetary adjustments made since 1995 and the resulting cuts in social services".. The Committee suggested that the Government assess the gender impact of anti-poverty measures and increase its efforts to combat poverty among women in general and vulnerable groups of women in particular. [209]

Minimum Income Criteria

Those seeking rental housing who are in receipt of public assistance, as well as other *Code*-identified individuals with low incomes, have been particularly affected by the application of minimum income criteria. Many landlords apply a standard guideline that a tenant applicant should be spending no more than 25-35 percent of his or her income on rent. Those who fall short of this ratio are rejected. While this is rationalized as a necessary means of assessing an applicant's ability to pay the rent, its use results in the denial of access to rental units to members of disadvantaged groups protected by the *Code* who frequently have lower incomes. There is no evidence that individuals from disadvantaged or low income groups, when spending more of their income on housing than a rent-to-income ratio would allow, are more likely to default on rent payments.

Research indicates that approximately one-third of Ontarians pay in excess of 30 percent of their household incomes in rent.[210] Overwhelmingly, these persons pay their rent in full and on time. There is no evidence that social assistance recipients default on their rent more often than others, or that they are less responsible with their money.[211] In fact, a 1997 report by the Quebec Human Rights Commission shows that 78 percent of defaulting tenants had a job at the time they failed to pay the rent.[212] The Quebec report concluded that a tenant selection criterion used by landlords based on a rent-to-income ratio leads to systemic discrimination for individuals with low income on the ground of "social condition".[213]

In Ontario, the use of rent-to-income ratios and minimum income requirements was considered in the case of *Kearney* v. *Bramalea*.[214] The case involved three

landlords, two of whom used rent-to-income ratios, and a third who applied a minimum income cut-off of $22,000 per annum. The Board of Inquiry ruled that rent-to-income ratios and minimum income criteria breach the *Code*, whether used alone or in conjunction with other criteria or requirements. The Board found that the evidence showed that these practices had a disparate impact on groups protected under the *Code* and that these policies were not *bona fide* as they had no value in predicting whether a tenant would default. On appeal, the Ontario Superior Court upheld the Board's finding that the landlord's use of rent-to-income ratios/minimum income criteria as the sole basis for refusing applications constituted indirect discrimination against the complainant on a ground prohibited by the *Code*. [215]

The *Code* was subsequently amended by the addition of section 21(3), which permits landlords to use, in the manner prescribed by the *Code* and regulations, income information, credit checks, credit references, rental history, guarantees or other similar business practices for selecting prospective tenants. With respect to the use of income information, Regulation 290/98 under the *Code* permits landlords to request income information from a prospective tenant only if the landlord also requests credit references, rental history, and credit checks, and to consider income information only together with all the other information that the landlord obtained. The Regulation specifically reaffirms that none of these assessment tools may be used in an arbitrary manner to screen out prospective tenants based on *Code* grounds. The criteria must be used in a *bona fide* and non-discriminatory fashion. Where income information, credit checks, credit references, rental history, or guarantees are being applied in a fashion that creates systemic barriers for persons identified by a *Code* ground, the landlord will be required to show that this is a *bona fide* requirement – that is, that the criteria could not be applied in a non-discriminatory fashion without creating undue hardship for the landlord.

The Commission has been informed that there are continuing issues with the use of income information by landlords, and that landlords are misinterpreting or misapplying the provisions of the *Code* and Reg. 290/98 and continuing to apply rent-to-income ratios. For example, requirements that tenants produce co-signors and guarantors may create systemic barriers. The Commission has been informed that it is the practice of many landlords to automatically require low-income applicants (particularly those in receipt of social assistance) to provide a co-signor or guarantor. Often the landlords will place restrictive rent-to-income ratios on the co-signors. This is a major barrier for many individuals protected by the *Code*, as few have access to a co-signor or guarantor, particularly not one that can meet the requested rent-to-income ratios. While the use of co-signors or guarantors may be appropriate where a tenant has poor references or a history of default, requiring co-signors or guarantors merely because an applicant is in receipt of social assistance, for example, may be a violation of the *Code*. It is the Commission's position that when landlords

consider income information, they must do so in a *bona fide* effort to validly assess potential tenants.

The Board of Inquiry in *Vander Schaaf* v. *M.R. Property Management Ltd.* [216] considered the use of rent-to-income ratios in the context of the new regulation. While the Board did not find a causal connection between the denial of the application and the use of rent-to-income ratios in this instance, it did make a number of comments with respect to this issue. The Board stated that the phrase "income information" is broad enough to encompass information about the amount, source and steadiness of a potential tenant's income. It further stated that permitting landlords to obtain "income information" does not permit them to apply rent-to-income ratios. The Board of Inquiry in *Sinclair* v. *Morris A. Hunter Investments Ltd.* [217] found that based on its previous decisions, the *Code* and the regulation, it could issue a cease and desist order requiring the landlord in that case to stop using rent-to-income ratios. The Board strongly cautioned all landlords against the continued use of rent-to-income ratios as they have been found to be discriminatory in their application to such a wide range of potential tenants.

Social and Economic Condition

Vulnerable groups protected by human rights legislation are more likely to experience low social and economic status or condition.[218] Poverty is linked inextricably with inequality, particularly for women (especially lone mothers and elderly women), Aboriginal persons, racialized groups and persons with disabilities. Housing is one of the primary social areas in which an individual's socio-economic condition may contribute to the treatment he or she experiences. In order to properly address human rights issues that arise in housing, it is impossible to ignore the role that poverty may play in exacerbating an individual's experience of discrimination.

While the ground of "receipt of public assistance" enables the Commission to address some forms of discrimination based on a person's social and economic condition in the area of housing, it fails to cover broader issues of poverty. Those living in poverty who are not in receipt of public assistance, for example, the working poor, homeless persons, and those who are otherwise not eligible for public assistance, are not entitled to the protection of the *Code* in housing. Further, the current language of the *Code* does not allow the Commission to easily address systemic issues of poverty. For example, the *Code* provides limited opportunity to address, through complaints of discrimination, the situation of a person who is living in poverty because social assistance benefits are too low, and who not have adequate food or housing.

Homelessness is one of the most extreme manifestations of low social and economic status. Those who are homeless are lacking "many of the things that keep people healthy like income, social status, support networks, education, a healthy environment for children, jobs, [and] health services..."[219] As a result, homeless people frequently find themselves at the outermost margins of society.

The homelessness disaster in Ontario's cities has been well documented. In addition to extensive work conducted by the Toronto Disaster Relief Committee and the City of Toronto's annual report cards on homelessness, the extensive Golden Report on Homelessness[220] was released in January 1999.

An excerpt from the Golden Report describes the full extent of the problem:

> Homelessness[221] has reached unprecedented levels in Toronto, as well as in other cities across the country. In Toronto, there are far too many homeless people and their numbers are increasing. More people are living on the streets and using shelters, and pressure on drop-in centres, food banks, and other emergency services is constantly increasing. Evictions are on the rise, and waiting lists for social and supportive housing continue to get longer.[222]

Homelessness is not confined to Toronto.[223] Other reports have documented increased rates of homelessness in other Ontario cities including Peterborough, Kitchener, Sudbury, Brampton, London, Windsor, Ottawa, Hamilton, and even smaller communities, such as Parry Sound.[224]

Those living in a state of homelessness are highly vulnerable to ill health and the spread of disease. Due to the unpredictability and instability of their day-to-day circumstances, many will find it very difficult to maintain medication or treatment programs. Other hazards include harassment, abuse, extreme stress, malnutrition, dehydration, sleep deprivation, and inclement, sometimes life-threatening, weather.

Some Facts About Homelessness in Toronto:[225]

- A "typical" homeless person is no longer a single, alcoholic, adult male. Youth under 18 and families with children are now the fastest-growing groups in the homeless and at-risk populations. In 1996, in Toronto, families accounted for 46 percent of the people using hostels and 5,300 children were homeless.
- Between 30 – 35 percent of homeless people suffer from mental illness. The estimates are higher for some population groups: for example, 75 percent of homeless lone women suffer from mental illness.
- At least 47 percent of hostel users come from outside Toronto.

The Golden Report gives an overview of some of the causes of homelessness:

- Increased poverty – poverty has increased due to public policy changes such as restrictions on Employment Insurance eligibility and cuts to public assistance
- A lack of affordable housing
- Deinstitutionalization and lack of discharge planning - the lack of adequate community support programs has resulted in increased numbers of people with mental illness and addictions who are discharged from hospitals and jails being homeless
- Social factors – domestic violence and physical and sexual abuse, for example, have increased the rates of homelessness[226]

It is clear that one's social and economic condition has a direct bearing on the likelihood of one becoming homeless. For example, those living in poverty are at a greater risk of not being able to secure affordable housing or of not being able to make the rent payments for the housing that they do have.

Discrimination also contributes to homelessness. Housing providers continue to screen out prospective tenants on the basis of prohibited *Code* grounds, including the receipt of public assistance, and on the basis of stereotypes about poverty and the poor. This is often done through the use of rigid selection criteria and rent-to-income ratios, along with requests for exorbitant rent deposits and guarantors.

Once an individual or a family becomes homeless, the potential for discrimination increases further. As mentioned in the section dealing with the ground of family status, the Golden Report states "it is not uncommon for families that are staying in shelters or in motels, families with good credit histories and good references, to be refused an apartment by many different landlords. Discrimination can make the rental housing market impenetrable for those most in need of housing."[227] It is extremely difficult for one who has become homeless to re-enter "mainstream" society. J. David Hulchanski, a professor in University of Toronto's Faculty of Social Work and Director of the Centre for Urban and Community Studies at the University of Toronto, has noted:

> The homeless are people who have passed from one 'status slot' in society to a situation that has no status. The discrimination and unequal treatment is as complete as it possibly can be. They cannot access or enjoy any of the rights or opportunities of people who are adequately housed. In the ordinary course of day-to-day life, they are in a state of 'social abeyance.' They are dependent on emergency services for their basic survival. These services are not provided in a comprehensive and systematic fashion so as to help people 'exit' their social abeyance as quickly as possible. Rather, the emergency services have emerged on a haphazard basis and have proven to be inadequate by many forms of evaluation and research.[228]

According to the Golden Report, the following groups are at high risk of being or becoming homeless: families with children, youth, abused women, Aboriginal people, and immigrants and refugees.[229]

The Golden Report made numerous recommendations for combating homelessness, including:

- appointment of a facilitator for action on homelessness
- establishment of a 24-hour homelessness services information system
- creation of a sufficient new supply of supportive and low-cost housing
- treatment programs made available specifically for young parents with substance abuse problems
- dedicated and supported housing for young homeless mothers
- establishment of partnerships between youth shelters and landlords
- additional supportive housing units for abused women and their children
- provision of emergency shelter for immigrants and refugees
- an increase in the shelter component maximum for social assistance so that it equals 85 percent of median market rent
- a shelter allowance program that would reduce the share of income that low-income people spend on housing to between 35 and 40 percent of income
- the establishment and implementation of protocols for all persons with no fixed address who are discharged from institutions
- establishment of a harm-reduction facility on a pilot basis to accommodate up to 30 homeless people who cannot participate in programs that require total abstinence
- establishment of a high-support residential program for people with severe mental illness on site at a hospital
- creation of an overall provincial policy on supportive housing which ensures that definitions of special need and eligibility for supportive housing are broad enough to include "hard to house" homeless people

These recommendations appear to be comprehensive, thoughtful and practical. Yet, nearly eight years later, many of them have not been implemented and the problem of homelessness in Ontario's cities shows no signs of abating.

International Commitments

The *Universal Declaration of Human Rights*, adopted by the United Nations General Assembly in December 1948, proclaimed the inviolability of social and economic rights. Social and economic rights contained in the *Declaration* include the right to own property[230], the right to social security and to the realization of social and economic rights "indispensable for [a person's] dignity and the free development of his [or her] personality"[231], rights with respect to employment[232] and rights with respect to education.[233] Article 25 of the *Declaration* recognizes a right to a certain standard of living, including a right to housing:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, *housing* and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. [emphasis added]

Article 2 of the *Declaration* states that everyone is entitled to these rights without distinction of any kind based on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The moral statements expressed in the *Declaration* were given legal force through two covenants: the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

The *ICESCR* is one of the most influential and comprehensive international documents in the area of social and economic rights. Article 11 of the *ICESCR* states:

> The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and *housing*, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. [emphasis added]

The *General Comment on the Right to Adequate Housing* by the Committee on Economic, Social and Cultural Rights[234] reiterates that the enjoyment of the right to adequate housing must not be subject to any form of discrimination. As well, it clarifies that the right is to *adequate* housing, including considerations of security of tenure, accessibility, habitability, and affordability, among others. Financial costs associated with housing should not be at a level where the attainment and satisfaction of other basic needs are compromised or threatened.

In addition, there are a series of international conventions, declarations and agreements that address economic, social and cultural rights. These instruments have further refined international legal norms relating to a wide range of socio-economic issues. [235]

Protection of economic, social and cultural rights has been deemed necessary as the right to live a dignified life can never be attained unless all basic necessities of life - work, food, housing, health care, education and culture - are adequately and equitably available to everyone.

Canada became a State party to the *ICESCR* in 1976. The *ICESCR* is a legally binding instrument with States parties accepting the responsibility to implement and maintain the rights guaranteed therein. Article 28 provides that the

Covenant's provisions "shall extend to all parts of federal States without any limitations or exceptions." Accordingly, the *ICESCR* is binding on the federal government and each of the provinces and territories, and rights that are within provincial competence are the obligation of the provincial and territorial governments. Before ratification of both the *ICESCR* and the *ICCPR*, there was extensive consultation between the federal government and the provinces. After a 1975 Federal-Provincial Ministerial Conference on Human Rights, all the provinces gave their consent to Canada's ratification of both covenants.

Article 2 describes the nature of the legal obligations under the *ICESCR* and the manner in which States parties should approach implementation of the substantive rights. States parties are required to take steps to the maximum of their available resources with a view to achieving progressively the full realization of *ICESCR* rights by all appropriate means. The *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* state that legislative measures alone are not sufficient: administrative, judicial, policy, economic, social and educational measures will be required by governments to ensure *ICESCR* rights.[236]

It is clear that for many Canadians, these international and domestic rights are an unrealized promise. Many continue to struggle in the rental housing market, and may find themselves in housing that is neither affordable nor adequate, or, in extreme cases, may find themselves without housing of any kind. One's housing situation is generally a good indicator of one's overall social and economic condition.

On several occasions, the United Nations has expressed significant concern about Canada's record in implementing social and economic rights.[237] Most recently, in May 2006, the Committee on Economic, Social and Cultural Rights, which oversees the *ICESCR*, issued its review of Canada's compliance with the Covenant. The Committee was critical of fact that 11.2% of Canada's population still lived in poverty in 2004, particularly in light of Canada's economic wealth and resources. The Committee noted with concern that poverty rates remain very high among disadvantaged and marginalized individuals and groups such as Aboriginal persons, African Canadians, immigrants, persons with disabilities, youth, low-income women and single mothers.[238]

The Committee also noted with concern the "insufficiency of minimum wage and social assistance to ensure the realization of the right to an adequate standard of living".[239] The Committee recommended that "the State party assess the extent to which poverty is a discrimination issue in Canada, and ensure that measures and programmes do not have a negative impact on the enjoyment of economic, social and cultural rights, especially for disadvantaged and marginalized individuals and groups."[240]

As well, concern has been expressed about the disproportionate number of women, especially lone mothers, living in poverty and the effect that one's socio-economic condition has on one's ability to access adequate housing; some reports have directly attributed blame to cuts in social funding.[241]

These strong words from the Committee on Economic, Social and Cultural Rights were echoed in April of 1999, by the Human Rights Committee, the body that oversees the *International Covenant on Civil and Political Rights*. That Committee issued a report on Canada's compliance under the Civil and Political Covenant that stressed the interdependence between civil and political rights and economic and social rights. The Committee observed that "homelessness has led to serious health problems and even to death."[242]

Canada has also been subjected to criticism in the international context for the failure of its courts to provide remedies for violations of social and economic rights. Judicial and legislative reluctance to address social and economic issues as rights has real consequences for vulnerable groups, and has contributed to an increased focus on the role of human rights commissions and human rights legislation in protecting these rights.

OHRC Advancement of Housing Protections Through Social and Economic Rights

It has long been argued that human rights commissions have an obligation to become more involved in protecting and promoting economic and social rights and in implementing international treaties to which Canada is a party, such as the *ICESCR*.

The addition of "social condition" as a ground to human rights legislation has been proposed as one option for better dealing with economic inequality in Canada, and for more effectively addressing broader human rights issues related to housing.[243] Section 10 of the Quebec *Charter of Human Rights and Freedoms* has provided for equal recognition and exercise of rights without discrimination on the basis of social condition since it came into force in 1976. Although not defined in the legislation, the courts have interpreted the ground to include a person's standing in society as based on occupation, income, level of education or family background, and to include perceptions based on one or more of these factors.[244]

In the past several years there has been strong support among human rights organizations[245] and other bodies, among them the Canadian Senate[246] and the Canadian Human Rights Act Review Panel,[247] for adding "social condition" to other human rights legislation in Canada. This has resulted in the inclusion of "social condition" in human rights legislation in two additional jurisdictions: the Northwest Territories in 2002, and New Brunswick in 2005.[248] These two pieces of legislation have provided statutory definitions similar to the judicial

interpretation of the ground in Quebec, addressing treatment based on a person's association with a socially identifiable group based on income, occupation, and/or education.[249]

Human rights legislation in other provinces and territories also provides some limited protection relating to social and economic rights. Like Ontario, Saskatchewan protects against discrimination on the basis of "receipt of social assistance", but extends the protection beyond housing accommodation to a broader number of areas.[250] Alberta, British Columbia, Manitoba, Nova Scotia, Nunavut, and the Yukon provide some wider protections in prohibiting discrimination based on "source of income",[251] although in British Columbia this protection is only extended in tenancy. "Source of income" is broader than "receipt of public assistance", which does not protect the working poor or those who may be discriminated against because of another source of income such as spousal support or receipt of pension benefits. However, none of these grounds offer broad protections relating to other determinants of socio-economic status.

The addition of "social condition" as a ground in the Ontario *Code* has the potential to provide greater rights to freedom from discrimination in a range of ways. For example, the ground may encompass sources of income including and beyond receipt of public assistance, such as retirement incomes, or even a lack of formal income. In addition, adding the ground could provide a means for the Ontario Human Rights Commission to address more directly prejudice relating to poverty, and to acknowledge the systemic disadvantage which social condition and poverty can bring. It is broader than the more limited protections relating to source of income or receipt of public assistance, in that it addresses socio-economic status which can be based on not just on the source and level of income but also on occupation, income, education and family background. It would also have the potential to apply across social areas. Further, it would provide a more effective avenue for the Commission to challenge laws and practices that negatively categorize and stereotype those living in poverty; it would permit the Commission to deal more effectively with issues related to homelessness; and, it would be a means for the Commission and the province to better comply with some of Canada's international obligations.

However, even in the absence of "social condition" as a specific ground in the *Code*, there may be other ways for the Commission to address issues relating to social and economic rights broadly and housing rights in particular.

The preamble to the *Code* makes explicit reference to the *Universal Declaration of Human Rights* as proclaimed by the United Nations. Many have argued that, as a result, international law has been incorporated into the *Code*. Thus, it is argued, the Commission and the Human Rights Tribunal of Ontario could cite the *Universal Declaration of Human Rights* as a direct source of rights.[252]

In the alternative, international law can be used interpretively. Under this approach, international law does not constitute a direct source of rights, but informs the interpretation of various provisions of the *Code*.

The Supreme Court of Canada has made important statements that highlight the relevance of international human rights law in domestic human rights systems. For example, the Court has affirmed that Canadian law should provide at least as much protection as international human rights law. International law, according to the Court, helps give meaning and content to Canadian law. As Madame Justice L'Heureux-Dubé stated in *Baker* v. *Canada*, one of the Court's leading cases on the relationship of international law to Canadian law:

> [T]he values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review... [T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred.[253]

Thus, the Supreme Court has affirmed that administrative decision-makers should listen to international bodies and take Canada's international commitments seriously. Since human rights legislation in Canada has a quasi-constitutional status, international law has a special relationship to human rights codes. The Commission should, therefore, look to international law to expand current understandings of the *Code* to include economic, social and cultural rights within its mandate. As the *Universal Declaration* reminds us, economic, social and cultural rights go to the core of dignity and equality.

To date, however, there continues to be resistance by courts and tribunals in Canada to adopting these approaches. This may be because these arguments are still not commonly made by parties and the international jurisprudence is still relatively unfamiliar to many Canadian decision-makers.

Human rights commissions can do much to raise broader public awareness of social and economic rights through policy development and public education initiatives. The Ontario Human Rights Commission has already taken some steps towards this objective. In February 2000, in partnership with the Canadian Human Rights Foundation, the Commission held a policy dialogue event which brought together human rights agencies from across Canada, provincial government representatives, NGOs, academics and a senior representative from the United Nations Office of the High Commissioner for Human Rights. Attendees analyzed the ways in which commissions, civil society and government can work together to identify issues, developments and challenges in the field of human rights, including how social and economic rights may be

better protected and advanced.[254] Later the same year, the Commission held a two-day legal conference to explore how international obligations can be incorporated into the work of Canadian human rights commissions, and to facilitate the development of a litigation strategy for economic, social and cultural rights violations under the Ontario *Code*.

The Commission supported the drafting and adoption of two social and economic rights resolutions by the Canadian Association of Human Rights Agencies ("CASHRA") at its 2001 Annual General Meeting. The first resolution reiterated the international obligations regarding economic, social and cultural rights, and requested that federal, provincial, and territorial governments include the ground of social condition in their human rights legislation. The second resolution committed CASHRA members to use the *ICESCR* as an interpretive tool in enforcement and promotion, and to give full attention to these rights in the exercise of all aspect of their mandates.[255]

The Commission has also released a research paper, produced by its policy and education branch, entitled *Human Rights Commissions and Economic and Social Rights*.[256] This document was shared with CASHRA and other organizations, and posted on the Commission's website. In addition, former Chief Commissioner Keith Norton appeared before the Senate Standing Committee on Human Rights to discuss the machinery of government dealing with Canada's international and national human rights obligations, in particular the role of human rights commissions. The Commission has, therefore, taken steps to address social and economic rights in a range of ways over the past several years, and will continue to make efforts to meet the challenges of promotion and implementation of these rights, both in general, and in relation to housing issues specifically.

Legislatures, the judiciary, advocacy groups and NGOs also have key roles to play in implementing social and economic rights, in Canada and internationally, and can work in cooperation with human rights institutions in enforcing, monitoring, and promoting these rights.

Conclusion

It is clear from the issues raised by this Paper that there is a need for further examination of human rights issues that arise in the area of rental housing. Given the importance of adequate housing to an individual's overall quality of life and ability to participate meaningfully in society, the time to conduct this examination is now.

The feedback received through other consultations conducted by the Commission (*e.g.* family status and age consultations) indicates that many Ontarians are entirely unaware of their rights and responsibilities under the *Code*

with respect to rental housing. It is, therefore, a prime objective of the Commission to establish a policy clarifying the application of the *Code* to this area and to increase public awareness of human rights issues that arise in the rental housing context. It is also the goal of the Commission to identify other ways in which it can assist with the goal of adequate, affordable and discrimination-free housing for all Ontarians.

All documents related to this issue are available on our Web Site at www.ohrc.on.ca. Should you have any questions, you may contact the OHRC by telephone at (416) 314-4507, or 1-800-387-9080, or by TTY at (416) 314-6526 or 1-800-308-5561.

APPENDIX A: Glossary of Terms

Affordability is defined by the Canada Mortgage and Housing Corporation as "housing that costs less than 30 percent of total before-tax household income."[257]

Co-op Housing is an independently incorporated co-operative association formed for the purpose of providing housing to its members. Ownership of the housing rests with the co-operative, which leases individual units to its members. A co-operative is democratically controlled by its members, on a one member / one vote basis. Some co-ops include a specified number of subsidized units.

Core Housing Need describes a household which is "unable to pay the median rent for alternative local housing meeting all standards [*i.e.* housing conditions] without spending 30% or more of before-tax household income."[258]

Disability is defined as:
(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
(b) a condition of mental impairment or a developmental disability,
(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
(d) a mental disorder, or
(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*[259]

Family Status means the status of being in a parent and child relationship.[260]

Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.[261]

Homelessness is the state of being without housing. The Golden Report has defined "homeless people" as "those who are 'visible' on the streets or staying in hostels, the 'hidden' homeless who live in illegal or temporary accommodation, and those at imminent risk of becoming homeless."[262]

Household Income is defined by the Canada Mortgage and Housing Corporation as "all incomes reported by persons 15 years of age and older living in the household."[263]

Housing Conditions refers to "a set of specific measures summarizing the circumstances in which individual households live. These measures indicate whether housing is in good physical condition (adequate), whether it is spacious enough for its occupants (suitable), and whether it is affordable. In this framework, housing that is acceptable is housing that meets all three criteria, that is, housing that is adequate, suitable and affordable."[264]

Intersectionality has been defined as "intersectional oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone..."[265]

Islamophobia can be described as stereotypes, bias or acts of hostility towards individual Muslims or followers of Islam in general. In addition to individual acts of intolerance and racial profiling, Islamophobia leads to viewing Muslims as a greater security threat on an institutional, systemic and societal level.

Linguistic Profiling has been defined as the "determin[ation of] characteristics such as socio-economic status from the way a person uses language."[266]

Marital Status means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage.[267]

NIMBY or **NIMBYism** refers to "Not in My Back Yard" opposition to housing projects that are based on stereotypes or prejudices towards the people who will live in them. It can refer to discriminatory attitudes as well as actions, laws or policies that have the effect of creating barriers for people, such as those with low income and disabilities, who seek to move into affordable or supportive housing in a neighbourhood.

Racialization is the process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life. This term is widely preferred over descriptions such as "racial minority", "visible minority" or "person of colour" as it expresses race as a social construct rather than as a description of persons based on perceived characteristics.

Shelter Gap can be defined as the difference between the actual amount of a household's rent expense and the budgetary allocation for that expense (as determined, for example, by social assistance rates).

Social Housing is housing operated, funded or created, in whole or in part, by government programs.

Supportive Housing is housing that is accompanied by services to assist residents to live independently. More specifically, the Ontario Non-Profit Housing Association defines supportive housing as "housing + support" – the support

people need to keep their housing. People who may need supportive housing include the chronically homeless and hard-to-house, frail older persons, persons with physical, developmental or mental disabilities, victims of violence, those living with HIV/AIDS, youth or persons who have substance abuse problems.[268] The Ministry of Health and Long-Term Care states that supportive housing is designed for people who only need minimal to moderate care, such as homemaking or personal care and support, to live independently. It states that supportive housing buildings are owned and operated by municipal governments or non-profit groups including faith groups, seniors' organizations, service clubs, and cultural groups.[269]

Universal Design is defined by the Center for Universal Design at North Carolina State University as "the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal design benefits people of all ages and abilities."[270]

APPENDIX B: Housing Protections in Canadian Human Rights Legislation

Ground	CAN	AB	BC	MB	NB	NL	NT	NS	NU	ON	PE	QC	SK	YT
Race	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Colour	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ancestry		X	X	X	X	X	X	X	X	X			X	X
National Origin / Nationality	X			X	X	X	X	X	citizen-ship	citizen-ship	X	X	X	X
Ethnic Origin	X			X		X	X	X	X	X	X	X		X
Place of Origin		X	X		X				X	X			X	
Disability	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Religion/Creed	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Political Opinion/Belief[271]				X	X	X	X	X			X	X		X
Age	X		X[272]	X	X	X	X	X	X	X	X	X[273]	X	X
Sex or gender[274]	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Sexual Orientation	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Family and Marital Status	X	X	X	X	marital only	X	X	X, family affiliation	X	X	X	"civil status"	X	X
Socioeconomic status: "Source of income," or as noted		X	X[275]	X	social condition	X, social origin	social condition	X	X	receipt of public assistance	X	social condition	receipt of public assistance	X
Pardoned conviction	X						X		X					criminal charges /record
Other specified grounds[9]							gender identity	aboriginal origin				language		linguistic origin

ENDNOTES

[1] S. Chisholm, *Affordable Housing in Canada's Urban Communities: A Literature Review* prepared for Canada Mortgage and Housing Corporation (July 2003) at 23, online: <http://www.chra-achru.ca/english/View.asp?x=511> (date accessed: October 26, 2006).
[2] *Ibid.*
[3] The scope of this Paper is discrimination and harassment in the social area of "occupancy of accommodation", also referred to simply as "housing."
[4] See Ontario Human Rights Commission, *Time for Action: Advancing Human Rights for Older Ontarians* (Toronto: Queen's Printer, 2003) at 74.
[5] For more information on the Commission's work in this area, please see the section of this Paper entitled **Social and Economic Condition**.
[6] In May 2005, the Commission published a Discussion Paper entitled, *Human Rights & the Family in Ontario*, which outlined key issues and invited submissions from interested parties. The Commission also distributed a questionnaire and posted it on its website. During the fall of 2005, the Commission also held a series of roundtable discussions on specific issues of concern. In 2007, the Commission released a Consultation Report, *The Cost of Caring*, which reported on the feedback received from those who participated in the consultation as well as *Policy and Guidelines on Discrimination Because of Family Status*.
[7] See, for example, Canada Mortgage and Housing Corporation, *Rental Market Report: Toronto CMA* (October 2005) at 3, online: <https://www03.cmhc-schl.gc.ca/b2c/b2c/init.do?language=en&z_category=0/0000000079> (date accessed: October 26, 2006) which shows that 75 percent of new immigrant households rely, at least initially, on the rental market to meet their housing needs.
[8] Ontario *Human Rights Code*, R.S.O. 1990, c. H. 19.
[9] Ontario Non-Profit Housing Association and Co-operative Housing Federation of Canada, Ontario Region, *Where's Home? A Picture of Housing Needs in Ontario* (2005) at 1, online: <http://www.onpha.on.ca/affordable_housing_initiatives/fight_resources/> (date accessed: September 1, 2006).
[10] Information taken from M. Shapcott, *The Ontario Alternative Budget 2001: Made-in-Ontario Housing Crisis* (Canadian Centre for Policy Alternatives, 2001) at 10, online: <http://www.policyalternatives.ca/documents/Ontario_Office_Pubs/housing_crisis.pdf> (date accessed: October 27, 2006).
[11] S.O. 1997, c. 24. The *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 (the "*RTA*") has been proclaimed and came into effect on January 31, 2007. The *RTA* maintains the ability of landlords to set starting rents, but once the rent is set, it is controlled by provisions of the *RTA*. The effects of the *RTA* on the rental housing situation in Ontario remain to be seen.
[12] The Canada Mortgage and Housing Corporation reported that the completion of new purpose-built rental apartments declined by 44% in 2004 and a further 3% in 2005. See *Rental Market Report: Toronto CMA, supra* note 7 at 3.
[13] See J. Engeland, R. Lewis, S. Ehrlich & J. Che, *Evolving Housing Conditions in Canada's Census Metropolitan Areas, 1991-2001* (Ottawa: Statistics Canada, January 2005) at 35-36, online: <http://www.statcan.ca/english/research/89-613-MIE/89-613-MIE2004005.pdf> (date accessed: October 26, 2006).
[14] *Ibid.* at 7.
[15] *Ibid.* at 6.
[16] Households described as being in "core housing need" are households which are "unable to pay the median rent for alternative local housing meeting all standards [*i.e.* housing conditions] without spending 30% or more of before-tax household income." *Ibid.* at 36.
[17] *Ibid.* at 43.
[18] M. Shapcott, *supra* note 10 at 2.
[19] *Report of the Mayor's Homelessness Action Task Force: Taking Responsibility for Homelessness* (January 1999) (Chair: Anne Golden) at vii [hereinafter *Report of the Mayor's Homelessness Action Task Force*].

[20] Statistics Canada defines "rural and small town" as the population living outside the commuting zone of urban centres with a population of 10,000 or more; Canada Mortgage and Housing Corporation, *Housing Needs of Low Income People Living in Rural Areas: The Implications for Seniors* (July 2003) Socio-Economic Series 03-012, online: <http://www.cmhc-schl.gc.ca/publications/en/rh-pr/socio/socio03-012-e.pdf> (date accessed: March 30, 2007).
[21] *Ibid.*
[22] Advocacy Centre for Tenants Ontario, *Canada-Ontario Affordable Housing Program* (August 2006), online: <http://www.acto.ca/english/acto_content.php?topic=6&sub=41> (date accessed: February 5, 2007).
[23] According to the Ontario Non-Profit Housing Association, as of October 2005 Toronto, Ottawa, York, Halton, Waterloo, Niagara, Brantford, Thunder Bay, Peterborough, Stratford, Wellington and Windsor had created affordable housing strategies with housing plans in many other municipalities underway. J. Connelly, *The Case for a Systematic Solution to Discriminatory NIMBY Opposition in Ontario*, prepared for the ONPHA Mental Health, Special Needs and Alternative Housing Committee (October 2005) at 2, online: <http://www.onpha.on.ca/affordable_housing_initiatives/nimby/doc/nimby_report.pdf> (date accessed: March 2, 2007).
[24] Supportive housing is housing that is accompanied by services to assist residents to live independently. More specifically, the Ontario Non-Profit Housing Association defines supportive housing as "housing + support" – the support people need to keep their housing. People who may need supportive housing include the chronically homeless and hard-to-house, frail older persons, persons with physical, developmental or mental disabilities, victims of violence, those living with HIV/AIDS, youth or persons who have substance abuse problems; see Ontario Non-Profit Housing Website: <http://www.onpha.on.ca/issues_position_papers/housing/>. The Ministry of Health and Long-Term Care states that supportive housing is designed for people who only need minimal to moderate care, such as homemaking or personal care and support, to live independently. It states that supportive housing buildings are owned and operated by municipal governments or non-profit groups including faith groups, seniors' organizations, service clubs, and cultural groups; see Ontario Ministry of Health and Long-Term Care Website: <http://www.health.gov.on.ca/english/public/program/ltc/13_housing.html>.
[25] Connelly, *supra* note 23 at 2.
[26] From information provided by HomeComing Community Choice Coalition. See <www.homecomingcoalition.ca>.
[27] A study conducted by the Law Reform Commission of Canada examined all OMB decisions from 2000 to 2004 that involved people with disabilities. The 32 cases involved group homes, supportive housing, homeless shelters, housing for seniors and residential care facilities. The study found that, "despite sometimes significant controversy, the OMB approved all but four of the proposed applications for disability-related housing and services." L. Finkler, *Re-Placing (in)Justice: Disability-Related Facilities at the Ontario Municipal Board*, prepared for Law Commission of Canada (2005), cited in the *Case for a Systematic Solution to Discriminatory NIMBY*, *supra* note 23 at 7.
[28] L. Finkler, *ibid.*
[29] *Social Housing Reform Act, 2000*, S.O. 2000, c. 27.
[30] *Report of the Mayor's Homelessness Action Task Force*, *supra* note 19 at 144-145.
[31] The *Social Housing Reform Act* was enacted to devolve responsibility for the administration of social housing programs to the municipal government level.
[32] City of Toronto, *Shelter, Support and Housing Administration: Quick Facts* (June 2006), on-line: <http://www.toronto.ca/housing/pdf/quick-facts-2006.pdf> (date accessed: November 23, 2006).
[33] The Task Force estimates that the people on the social housing waiting list represent about one third of the at-risk population. See *Report of the Mayor's Homelessness Action Task Force* supra note 19 at section 7.1.
[34] Centre for Equality Rights in Accommodation, *Women and Housing in Canada: Barriers to Equality* (Toronto: March 2002), online: <http://www.equalityrights.org/cera/docs/CERAWomenHous.htm> (date accessed: November 23,

2006).

[35] Section 2 of the *Code* prohibits discrimination in housing on the basis of a number of grounds including age, ethnic origin, place of origin, ancestry and religion. Therefore, housing that contains restrictions based on age, ethnic origin, religion or other grounds there is a potential for a complaint of discrimination unless one of the exceptions contained in sections 14 (special programs), 15 (preferential treatment for people over 65) or 18 (religious, philanthropic, educational, fraternal or social institutions providing housing as part of their services) of the *Code* applies.

[36] Daily Bread Food Bank, *Ontario Works?* (2004), online: <www.dailybread.ca>.

[37] See sections 82, 83 of the *Social Housing Reform Act*.

[38] An August 2006 report notes that there is a looming problem with aging housing stock in the magnitude of $1.3 billion in Ontario. As well, many social housing buildings have low energy-efficiency ratings and require major retrofits to meet more modern standards. The result is escalating utility costs and a mismatch between costs and rents that has the potential to move more social housing programmes into deficit situations. Social Housing Services Corporation, *A Brief Summary of Social Housing Issues in Ontario* (August 2006), online: <http://www.shscorp.ca/content/Resources/DiscussionResearchPapers/OntarioSocialHousingOverview.pdf> (date accessed: February 6, 2007).

[39] *Co-operative Corporations Act*, R.S.O. 1980, c. C.35.

[40] Section 171 of the *CCA*.

[41] Section 171.5 of the *CCA* sets out circumstances under which a unit may be designated as a non-member unit.

[42] See *Iness* v. *Caroline Co-operative Homes Inc. (No. 5)* (2006), CHRR Doc. 06-450, 2006 HRTO 19 in which this situation was found to be discriminatory by the Human Rights Tribunal of Ontario.

[43] A co-op sought to evict an occupant for failing to perform the two hours of volunteer work each month required by the co-op's by-law, despite the fact that she had provided a doctor's note that she was incapable of performing the volunteer work for medical reasons. The Ontario Divisional Court stated that the co-op had a duty to respect the rights of its occupants under the Ontario *Human Rights Code* and to accommodate the needs of an occupant with a disability, to the point of undue hardship. The Court applied the *Code* and the Commission's *Policy and Guidelines on Disability and the Duty to Accommodate* and held that it would have been reasonable and appropriate for the co-op to obtain answers from the occupant's doctor to determine if any of the volunteer tasks could be performed, notwithstanding her medical condition. If so, it could have accommodated her by assigning her tasks she could perform, but if not, the cost of accommodating her by exempting her from the volunteer work requirement would be unlikely to impose an undue hardship. The Court concluded that it would be unjust in all the circumstances to evict the occupant: *Eagleson Co-Operative Homes, Inc.* v. *Théberge*, [2006] O.J. No. 4584 (Sup.Ct. (Div.Ct.)).

[44] *Walmer Developments* v. *Wolch* (2003), 67 O.R. (3d) 246 (Sup. Ct. (Div. Ct.)).

[45] [2006] 1 S.C.R. 513. This decision was applied by the Ontario Divisional Court in deciding whether to evict an occupant of a co-op under the *CCA*, see *Eagleson Co-Operative Homes, Inc.* v. *Théberge*, *supra* note 43.

[46] See Ministry of Municipal Affairs and Housing, "Frequently Asked Questions," online: <http://www/mah.gov.on.ca/userfiles/HTML/nts_1_26925_1.html> (date accessed: November 23, 2006).

[47] There are various sources for occupancy standards. For example, the Canada Mortgage and Housing Corporation has developed a Canadian National Occupancy Standard as have the province and municipal governments.

[48] S. Novac, J. Darden, J.D. Hulchanski & A.M. Seguin, "Housing Discrimination in Canada: What do we know about it?" Research Bulletin #11 (University of Toronto: Centre for Urban and Community Studies, December 2002) at 6, online: <http://www.urbancentre.utoronto.ca/pdfs/researchbulletins/11.pdf>.

[49] Engeland, Lewis, Ehrlich & Che, *supra* note 13.

[50] Centre for Equality Rights in Accommodation, *Annual Report 2004-2005* at 6, online:

<http://www.equalityrights.org/cera/> (date accessed: August 28, 2006).

[51] The majority of complaints that were filed with the Commission in 2004-2005 were filed on the ground of disability, with family status, race and colour, and sex and pregnancy also comprising a significant number.

[52] The number of complaints filed in the area of housing has fluctuated over time and has, in fact, been higher in recent years. For example, in 2000-2001, housing complaints amounted to 8% of the total number of complaints received by the OHRC, and in 2001-2002, this number was 7%.

[53] For a detailed discussion of housing protections under the Ontario *Human Rights Code*, please see the section of this Paper entitled **Rental Housing and the Ontario *Human Rights Code***.

[54] Legislation in Alberta, British Columbia, New Brunswick and Saskatchewan does not provide explicit harassment provisions. Nova Scotia's legislation addresses sexual harassment, but does not explicitly address harassment relating to other grounds.

[55] Manitoba Human Rights Commission, *Housing Guidelines* (1998), online: <http://www.gov.mb.ca/hrc/english/publications/housing.html>; and New Brunswick Human Rights Commission, *Guideline on Discrimination in the Housing Sector* (2004), online: <http://www.gnb.ca/hrc-cdp/e/Guideline-on-Housing-Discrimination.pdf>.

[56] See <http://142.213.87.17/en/human-rights/housing.asp?noeud1=1&noeud2=3&cle=5> (date accessed January 8, 2007).

[57] B.C. Human Rights Coalition, *Human Rights: Your Rights to Know* (September 2003), online: <http://www.bchrcoalition.org>.

[58] The *Saskatchewan Human Rights Code*, S.S. 1979 c. S-24.1, s. 11(2); Prince Edward Island *Human Rights Act*, R.S.P.E.I. 1998, c. H-12, s. 3(2).

[59] Newfoundland and Labrador *Human Rights Code*, R.S.N.L. 1990, c. H-14, s. 6(3)(c).

[60] Yukon *Human Rights Act*. R.S.Y. 2002, c. 116, s. 10(c); British Columbia *Human Rights Code*, R.S.B.C. 1996, c. 210, s. 8(2)(a).

[61] In British Columbia, Newfoundland and Labrador, "accommodation" is addressed, along with services and facilities, in a separate social area from other housing-related protections, where these exceptions do not apply ("tenancy" in British Columbia, and the right to occupy "dwelling units" in Newfoundland).

[62] Yukon *Human Rights Act, supra* note 60 at s. 11(2); and the Northwest Territories *Human Rights Act* , S.N.W.T. 2002, c. 18, s. 12(3).

[63] British Columbia *Human Rights Code, supra* note 60 at s. 10 (2)(b)(i), and *The Saskatchewan Human Rights Code, supra* note 58 at s. 11(4) allow for exceptions relating to age, while Newfoundland's exceptions relate to age and family status; *Human Rights Code, supra* note 59 at s. 7(4).

[64] *Human Rights Code*, R.S.N.B.A. 1985, c. 30, s. 4(5).

[65] British Columbia *Human Rights Code, supra* note 60 at s. 10(2)(c).

[66] Yukon *Human Rights Act, supra* note 60 at s. 11(3)(b); Nunavut *Human Rights Act*, S.Nu. 2003, c. 12, s. 13(2)(b); Manitoba *Human Rights Code*, C.C.S.M. 1987, c. H175, s. 16(2)(a).

[67] Newfoundland and Labrador *Human Rights Code, supra* note 59 at s. 6(3)(b).

[68] British Columbia *Human Rights Code, supra* note 60 at s. 10(2); *The Saskatchewan Human Rights Code, supra* note 58 at s. 2(1)(i).

[69] Nova Scotia *Human Rights Act*, R.S.N.S. 1989, c. 214, s. 6(b); and Quebec *Charter of human rights and freedoms*, R.S.Q., c. C-12 , s. 14.

[70] Prince Edward Island *Human Rights Act, supra* note 58 at s. 3.

[71] Alberta's *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 1980, c. H-14, s. 5(a); and the Northwest Territories *Human Rights Act*, *supra* note 62 at s. 12(1)(a).

[72] Nunavut *Human Rights Act, supra* note 66 at s. 13(2)(a); Manitoba *Human Rights Code*, *supra* note 66 at s. 16(2)(b).

[73] *Saskatchewan Human Rights Code, supra* note 58 at s. 11(3).

[74] Signed Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

[75] (1976) 993 U.N.T.S. 3, Can. T.S. 1976 No. 46.

[76] The *Universal Declaration of Human Rights* was adopted and proclaimed by the United Nations General Assembly in 1948. The *ICESCR* was adopted by the United Nations in 1966 and entered into force in 1976. Canada ratified the *ICESCR* in 1976.

[77] Subsection 47(2) of the Ontario *Human Rights Code*, R.S.O. 1990, c. H. 19.
[78] Subsection 3(4) of the *Residential Tenancies Act, supra* note 11.
[79] See, for example, *Karoli Investments Inc.* v. *Reid*, [2006] O.R.H.T.D. No. 8 at para. 75 and *Hillhurst Park Apartments* v. *Wolstat*, [2005] O.R.H.T.D. No. 33.
[80] A discussion of case law interpreting the regulations is contained in the section **Minimum Income Criteria.**
[81] An individual cannot be discriminated against because of his or her association, relationship or dealings with another person identified by a ground in the *Code*. A person has this protection whether or not he or she is identified by a *Code* ground. For example, a landlord will likely be engaging in discriminatory behaviour if he refuses to rent an apartment to a man because his co-tenant is a woman with a very young child.
[82] Systemic discrimination may also overlap with other types of discrimination that are not neutral. For example, a discriminatory policy can be compounded by the discriminatory attitudes of the person who is administering it.
[83] For a more detailed discussion of minimum income criteria, please see the section **Minimum Income Criteria**.
[84] A rule or practice can be justified if it is reasonable and genuine. However, it will only be allowed if a change or exception to the rule or practice would be too costly or would create a health or safety danger. If this cannot be shown, the rule or practice must be changed or an exception made so that there is no discrimination against an individual or particular group of people protected by the *Code*.
[85] Document available at <http://www.csa-intl.org/onlinestore/GetCatalogItemDetails.asp?mat=2004958&Pa>.
[86] See <http://www.design.ncsu.edu:8120/cud/univ_design/princ_overview.htm>.
[87] *Di Marco* v. *Fabcic* (2003), CHRR Doc. 03-050, 2003 HRTO 4.
[88] The concept of "intersectionality" has been defined as "intersectional oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone..." M. Eaton, "Patently Confused, Complex Inequality and *Canada* v. *Mossop*" (1994) 1 Rev. Cons. Stud. 203 at 229.
[89] Ontario Human Rights Commission, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* (Toronto: Queen's Printer, 2001), online: <www.ohrc.on.ca>.
[90] Racialization is the process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life. This term is widely preferred over descriptions such as "racial minority", "visible minority" or "person of colour" as it expresses race as a social construct rather than as a description of persons based on perceived characteristics. See Ontario Human Rights Commission, *Policy and Guidelines on Racism and Racial Discrimination* (Toronto: Queen's Printer, 2005), online: <http://www.ohrc.on.ca> [hereinafter *Racial Discrimination Policy*].
[91] *Richards* v. *Waisglass* (1994), 24 C.H.R.R. D/51 (Ont. Bd. Inq.).
[92] See also *Watson* v. *Antunes* (1998), CHRR Doc. 98-063 (Ont. Bd. Inq) in which a Board of Inquiry held that the respondent discriminated against the complainants, a Black woman seeking to rent an apartment and her mother who was assisting her, when she reluctantly showed them the apartment and then misled the mother about it being taken when she later called to rent it. Also, in *Baldwin* v. *Soobiah* (1983), 4 C.H.R.R. D/1890 (Ont. Bd. Inq.), a Board of Inquiry held that a *prima facie* case of discrimination in housing rental was established when the respondent made statements to potential tenants of a certain race that a property was rented, but then stated to potential tenants of another race that the apartment was still available. In other words, a pattern of refusals on the part of a landlord to rent to those of a particular ethnic origin was found to be evidence of unlawful discrimination.
[93] Data from auditing studies have been generally accepted by U.S. courts as strong evidence of racial discrimination. Please see D.S. Massey & G. Lundy, "Use of Black English and Racial Discrimination in Urban Housing Markets" (March 2001) 36(4) Urban Affairs Review 452 at 454.
[94] K.L. Dion, "Perceptions of Housing Discrimination in Toronto: The Housing New Canadians Project" (2001) 57 Journal of Social Issues 523 at 527.

[95] "Linguistic profiling" has been defined as the "determin[ation of] characteristics such as socio-economic status from the way a person uses language." See http://www.wordspy.com/words/linguisticprofiling.asp (date accessed: January 3, 2007).
[96] Massey & Lundy, *supra* note 93 at 466-7.
[97] See, for example, Dion, *supra* note 94 at 528.
[98] "Islamophobia" can be described as stereotypes, bias or acts of hostility towards individual Muslims or followers of Islam in general. In addition to individual acts of intolerance and racial profiling, Islamophobia leads to viewing Muslims as a greater security threat on an institutional, systemic and societal level. See Commission's *Racial Discrimination Policy*, *supra* note 90.
[99] *Ontario (Human Rights Comm.)* v. *Elieff* (1996), 37 C.H.R.R. D/248 (Ont.Ct. (Gen. Div.)), rev'g in part (1994), 25 C.H.R.R. D/163 (Ont. Bd. Inq.).
[100] *Fancy* v. *J & M Apartments Ltd.* (1991), 14 C.H.R.R. D/389 (B.C.C.H.R.).
[101] *Chauhan* v. *Norkam Seniors Housing Cooperative Association* (2004), 51 C.H.R.R. D/126, 2004 BCHRT 262.
[102] *King* v. *Bura* (2004), 50 C.H.R.R. D/213, 2004 HRTO 9.
[103] Additional examples of racial harassment in housing accommodation include: *Morrison* v. *Effort Trust Realty Co.* (1993), 26 C.H.R.R. D/119 (Ont. Bd. Inq.) and *Fuller* v. *Daoud* (2001), 40 C.H.R.R. D/306 (Ont. Bd. Inq.).
[104] As mentioned previously, section 12 of the *Code* provides protection against discrimination based on association with persons identified by *Code* grounds and allows persons to receive a remedy for having this right infringed.
[105] *John* v. *Johnstone*, (September 16, 1977), No. 82, Eberts (Ont. Bd. Inq.).
[106] *Hill* v. *Misener* (No. 1) (1997), 28 C.H.R.R. D/355 (N.S. Bd. Inq.).
[107] N. Klos, "Aboriginal Peoples and Homelessness: Interviews with Service Providers" (1997) 6:1 Canadian Journal of Urban Research 40 at 48.
[108] *Flamand* v. *DGN Investments* (2005), 52 C.H.R.R. D/142 (HRTO).
[109] *Ibid.* at para. 137.
[110] Engeland, Lewis, Ehrlich & Che, *supra* note 13 at 49.
[111] *Ibid.* at 50.
[112] Chisholm, *supra* note 1 at 19.
[113] M.R. Grant & R.K. Danso, "Access to Housing as an Adaptive Strategy for Immigrant Groups: Africans in Calgary" (2000) 32(3) Canadian Ethnic Studies 19.
[114] *Rental Market Report: Toronto CMA*, *supra* note 7 at 3.
[115] F. Barahona. "Immigrants hit with 'illegal' rents: Landlord demands up to year's rent from newcomers" *Toronto Star* (July 29, 2001); "Forum hears of discrimination in housing: Would-be tenants say they were victims of racism" *Toronto Star* (March 21, 2002).
[116] The *Code* and Regulation 290/98 permit landlords to request information about a prospective tenant's rental history. However, based on the decision in *Ahmed* v. *177061 Canada Ltd.* (2002), 43 C.H.R.R. D/379 (Ont. Bd. Inq.), treating the lack of a rental history in the same way as a negative rental history results in discrimination where the lack of a rental history is related to a *Code* ground.
[117] Grant & Danso, *supra* note 113.
[118] Engeland, Lewis, Ehrlich & Che, *supra* note 13 at 20.
[119] *Ibid.* at 52.
[120] *Ibid.* at 53.
[121] *Ibid.* at 50-51.
[122] *Women and Housing in Canada: Barriers to Equality*, *supra* note 34 at 8.
[123] *Conway* v. *Koslowski* (1993), 19 C.H.R.R. D/253 (Ont. Bd. of Inquiry).
[124] *Leong* v. *Cerezin* (1992), 19 C.H.R.R. D/381 (B.C.C.H.R.). The respondent also made an issue of the complainant's Chinese Canadian ancestry.
[125] *Women and Housing in Canada: Barriers to Equality*, *supra* note 34 at 8.
[126] T. Carter & C. Polevychok, *Housing is Good Social Policy* (Canadian Policy Research Networks, 2004) at 8.
[127] The February 20, 2002 Recommendations are available online at www.owjn.org/issues/w-abuse/hadley2.htm.

[128] Discrimination on the basis of family status will be discussed in greater detail in the **Family Status** section of this Paper.
[129] *Turanski* v. *Fifth Avenue Apartments* (1986), 7 C.H.R.R. D/3388 (B.C.C.H.R.).
[130] Statistics Canada, *Women in Canada 2000: A Gender-based Statistical Report* (Catalogue No. 89-503-XPE) at 138.
[131] *Ibid.* at 139.
[132] *Women and Housing in Canada: Barriers to Equality*, *supra* note 34 at 11.
[133] *Raphaël* v. *Conseil Des Montagnais du Lac Saint-Jean*, (1995) 23 C.H.R.R. D/259 (C.H.R.T.).
[134] M.M. Mann, *Aboriginal Women: An Issues Backgrounder* (Prepared for Status of Women Canada, August 2005), online: <http://www.swc-cfc.gc.ca/resources/consultations/ges09-2005/aboriginal_e.html> (date accessed: March 30, 2007). A national consultation process was launched in September 2006 on the issue of the division of matrimonial real property on reserve; see Indian and Northern Affairs Canada, News Release, "Addressing Matrimonial Property Rights On Reserves: Canada, AFN And NWAC Move Forward With Consultations" (29 September, 2006).
[135] *Women and Housing in Canada: Barriers to Equality*, *supra* note 34 at 10-11.
[136] National Working Group on Women and Housing, *Some Facts on Women and Housing in Canada*, online: <http://www.equalityrights.org/NWG/facts.htm> (date accessed: August 30, 2006).
[137] See Novac, Darden, Hulchanski & Seguin, *supra* note 48 at 3.
[138] *Reed* v. *Cattolica Investments Ltd.* (1996), 30 C.H.R.R. D/331 (Ont. Bd. Inq.).
[139] S. Novac, "Sexual Harassment of Women Tenants" (1990) 11 Canadian Women's Studies 2 at 58.
[140] [1995] 2 S.C.R. 418 at para. LXXII, L'Heureux-Dubé J.
[141] *Vander Schaaf* v. *M & R Property Management Ltd.* (2000), 38 C.H.R.R. D/251 (Ont. Bd. Inq).
[142] For other Canadian examples of discrimination on the basis of marital status, please see: *Swaenepoel* v. *Henry* (1985), 6 C.H.R.R. D/3045 (Man. Bd. Adj.) in which a Board found that the complainants, a group of three single women, were discriminated against by the respondents because of the respondents' assumptions about the characteristics of single people of the same sex, residing together as tenants, who did not conform to the nuclear family model; in *Gurman* v. *Greenleaf Meadows Investment Ltd* (1982), C.H.R.R. D/808 (Man. Bd. Adj.), a Board found that the respondent had discriminated against the complainants, two sisters and a brother, because they were a group of single adults of mixed sexes; in *Wry* v. *Cavan Realty (C.R.) Inc.* (1989), 10 C.H.R.R. D/5951 (B.C.C.H.R.), the British Columbia Human Rights Council found that the complainant (a single man) was discriminated against because the respondent only wished to rent to families and married couples. The Council found that there was discrimination on the basis of sex and marital status.
[143] *Booker* v. *Florin Village Investments Inc.* (1989), 11 C.H.R.R. D/44 (Ont. Bd. Inq.).
[144] *Raweater* v. *MacDonald*, (2004), 51 C.H.R.R. D/459, 2005 BCHRT 63.
[145] *Falkiner* v. *Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.). This decision under section 15 of the *Canadian Charter of Rights and Freedoms* struck down the definition of "spouse" under the *Family Benefits Act*, which presumed a spousal relationship as soon as a man and a woman began living together. The definition meant that many people, particularly women in receipt of social assistance, lost their entitlement. The Court found that the definition discriminated on the basis of marital status, sex, and the receipt of social assistance.
[146] In a federal case, *Schaap* v. *Canada (Armed Forces)* (1988), 12 C.H.R.R. D/451 (F.C.A.), the Court of Appeal held that the Canadian Human Rights Tribunal erred in law when it found that the protections against discrimination on the grounds of marital status do not protect persons in common-law relationships.
[147] *Matyson* v. *Provost* (1987), 9 C.H.R.R. D/4623 (Sask. Bd. Inq.).
[148] Canada Mortgage and Housing Corporation, *2001 Census Housing Series*. Research Highlight Socio-Economic Series 4-002 (Ottawa: 2004). In Canada, a household is considered to be in core need if: they are paying 30 percent or more of their before tax income on mortgage payments, taxes, utilities and rent; the dwelling is in need of major repairs; or, parents and

children, or children of different genders over the age of five have to share a bedroom.
[149] *Report of the Mayor's Homelessness Action Task Force, supra* note 19.
[150] Carter & Polevychok, *supra* note 126 at 15.
[151] Canada Mortgage and Housing Corporation, *Housing Canada's Children* (2000).
[152] S. Chau at al., *One in Five ... Housing as a Factor in the Admission of Children to Care* (Toronto: Centre for Urban and Community Studies, November 2001).
[153] *Women and Housing in Canada: Barriers to Equality, supra* note 34.
[154] *Report of the Mayor's Homelessness Action Task Force, supra* note 19.
[155] Please see N. Zukewich, "Unpaid Informal Caregiving" (Autumn 2003) 70 Canadian Social Trends 14, online: <http://dsp-psd.pwgsc.gc.ca/Collection-R/Statcan/11-008-XIE/0020311-008-XIE.pdf>.
[156] P. Khosla, *If Low Income Women of Colour Counted in Toronto* (Toronto: Community Social Planning Council of Toronto, 2003) at 23 and following, online: <http://www.socialplanningtoronto.org/Research%20&%20Policy%20Updates/Low%20Income%20Women%20of%20Colour%20Aug03.pdf>.
[157] *Fakhoury* v. *Las Brisas Ltd.* (1987), 8 C.H.R.R. D/4028 (Ont. Bd. of Inq.). This case is also important for its express consideration of public policy debates and international human rights documents, such as the *Universal Declaration of Rights*.
[158] For example, in *Thurston* v. *Lu* (1993), 23 C.H.R.R. D/253 (Ont. Bd. Inq.), a Tribunal held that denying a woman the right to apply for the apartment and rejecting her outright because she had a child resulted in *prima facie* discrimination. In *Cunanan* v. *Boolean Developments Ltd.* (2003), 47 C.H.R.R. D/236, 2003 HRTO 17, a Tribunal found a breach of the *Code* where the landlord refused to rent to a complainant because her family, which included three teenage children, was not the "ideal" size according to "Canadian" standards and was not suitable. In *Peterson* v. *Anderson* (1991), 15 C.H.R.R. D/1 (Ont. Bd. Inq.), a Tribunal held that the eviction of a pregnant tenant was discrimination on the ground of family status, as well as sex. The tribunal found evidence of stereotypes and disapproval of single parenthood and unmarried conjugal relationships, even though there was no general restriction on children in the building.
[159] *Fakhoury* v. *Las Brisas Ltd., supra* note 157. In this case, there was a policy whereby a four-person family, composed of one parent and three children, were required to rent at least a 3-bedroom unit. The tribunal held that there was no reasonable justification for this unequal treatment.
[160] *Booker* v. *Floriri Village Investments Inc., supra* note 143.
[161] *Ward* v. *Godina* (1994), CHRR Doc. 94-130 (Ont. Bd. Inq.).
[162] *Desroches* v. *Québec (Comm. des droits de la personne)* (1997), 30 C.H.R.R. D/345 (C.A. Qué.).
[163] *Cunanan* v. *Boolean Developments Limited*, supra note 158. See also *Fakhoury* v. *Las Brisas Ltd., supra* note 157.
[164] *Report of the Mayor's Homelessness Action Task Force, supra* note 19 at 91.
[165] P. Khosla, *supra* note 156 at 23 and following.
[166] *St. Hill* v. *VRM Investments Ltd.* (2004), CHRR Doc. 04-023, 2004 HRTO 1.
[167] See, for example, *Huot* v. *Chow* (1996), CHRR Doc 96-178 (B.C.C.H.R.).
[168] *St. Hill* v. *VRM Investments Ltd, supra* note 166 at para. 29.
[169] The *Code* does, in some instances, permit the preferential treatment of older persons. For example, section 15 of the *Code* permits preferential treatment for persons aged 65 and older, and therefore permits housing that is limited to persons over the age of 64; section 14 permits special programs to alleviate hardship and disadvantage, such as specially designed barrier-free housing projects aimed at older persons with disabilities; and, section 18 creates a defence for religious, philanthropic, educational, fraternal or social institutions or organizations that primarily serve the interests of older persons and that provide housing as part of their services. However, there is no defence that permits "adult lifestyle" housing that results in the exclusion of children or persons under a certain age. See Ontario Human Rights Commission, *Policy on Discrimination Against Older Persons because of Age* (Toronto: Queen's Printer, 2002), online: <http://www.ohrc.on.ca> [hereinafter the *Age Policy*].
[170] S. Page, "Accepting the Gay Person: Rental Accommodation in the Community" (1998) 36(2)

Journal of Homosexuality 31.
[171] *Ibid.* at 37.
[172] See *A.* v. *Colloredo-Mansfeld* (No. 3) (1994), 23 C.H.R.R. D/328 (Ont. Bd. Inq.) and *Grace* v. *Mercedes Homes Inc. (No. 1)* (1995), 23 C.H.R.R. D/350 (Ont. Bd. Inq.).
[173] See, for example, *Québec (Comm. des droits de la personne et des droits de la jeunesse) et Dubé* c. *Martin* (1997), 33 C.H.R.R. D/487 (T.D.P.Q.) in which a Quebec Tribunal found that trying to use freedom of religion as justification for a policy of refusing to rent to gays and lesbians was unacceptable. See also *Outingdyke* v. *Irving Apartments Ltd.* (2005), CHRR Doc. 05-565, 2005 BCHRT 443.
[174] Based on the definition of "age" in section 10 of the *Code*. However, section 4(1) of the *Code* also guarantees equal treatment in housing to sixteen and seventeen year-olds who have withdrawn from parental control.
[175] *Arzem* v. *Ontario (Ministry of Community and Social Services (No. 6) (2006)*, 56 C.H.R.R. D/426, 2006 HRTO 17, in the context of complaints of discrimination in the provision of autism services on the basis of age and disability.
[176] *Sinclair* v. *Morris A. Hunter Investments Ltd.* (2001), 41 C.H.R.R. D/98 (Ont. Bd. Inq).
[177] For a related case, please see *Dominion Management* v. *Vellenosi* (1989), 10 C.H.R.R. D/6413 (Ont. Bd. Inq.) in which an Ontario Board of Inquiry found that the complainant, a thirty-seven year old woman, had been discriminated against on the basis of age because the owners preferred to rent to older, wealthy couples. See also *Garbett* v. *Fisher* (1996), 25 C.H.R.R. D/379 (Ont. Bd. Inq.).
[178] *Bushek* v. *Registered Owners of Lot SL 1, Plan LMS13, Dist. Lot 384A, New Westminister Land Dist.* (1997), CHRR Doc. 97-224 at para. 48 (B.C.C.H.R.). See also *Watkins* v. *Cypihot* (2000), CHRR Doc. 00-036, 2000 BCHRT 13, and *Cunanan* v. *Boolean Developments Limited*, *supra*, note 158.
[179] Engeland, Lewis, Ehrlich & Che, *supra* note 13 at 50-51.
[180] See the Commission's *Age Policy* for more information on the Commission's interpretation of the *Code* as it relates to housing discrimination and older persons, *supra* note 169.
[181] See Appendix B, **Glossary of Terms**, for the full definition of "disability".
[182] *Yale* v. *Metropoulos* (1992), 20 C.H.R.R. D/45 (Ont. Bd. Inq.).
[183] See *Di Marco* v. *Fabcic* (2003), *supra* note 87.
[184] *Julie Ramsey* v. *S.W.M. Investments* (August 22, 1994), No. 642 (Ont. Bd. Inq.) [unreported].
[185] Ontario *Building Code Act, 1992*, S.O. 1992, c. 23.
[186] In March 2002, the Commission provided extensive input to the Ministry of Municipal Affairs and Housing on the barrier-free access requirements of the *Building Code*. The Commission's submission outlined ways in which the *Building Code* can incorporate human rights principles, and emphasized the need to achieve greater harmonization between the two *Codes*. The Commission's full submission to the *Building Code* consultation is available on the Commission Website at www.ohrc.on.ca.
[187] See, for example, *Quesnel* v. *London Educational Health Centre* (1995), 28 C.H.R.R. D/474 (Ont. Bd. Inq.).
[188] *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11.
[189] *Aquilina* v. *Pokoj* (1991), 14 C.H.R.R. D/230 (Ont. Bd. Inq.).
[190] *Weiher* v. *Polhill* (2003), 47 C.H.R.R. D/104, 2003 HRTO 13.
[191] See also the discussion of barriers to creating affordable and supportive housing for persons with mental disabilities in the section **Access to Affordable Rental Housing**.
[192] Page, *supra* note 170.
[193] *Iness* v. *Caroline Co-operative Homes Inc.*, *supra* note 42.
[194] *Ibid.* at para. 43.
[195] *Falkiner* v. *Ontario (Ministry of Community and Social Services)*, *supra* note 145.
[196] *Willis* v. *David Anthony Philips Properties* (1987), 8 C.H.R.R. D/3847 (Ont. Bd. Inq.).
[197] *Kostanowicz* v. *Zarubin* (1994), 28 C.H.R.R. D/55 (Ont. Bd.Inq.).
[198] *Québec (Comm. des droits de la personne)* c. *Whittom* (1993), 20 C.H.R.R. D/349 (Trib.Qué.), upheld on appeal, *Whittom* c. *Québec (Comm. des droits de la personne)* (1997), 29 C.H.R.R. D/1 (C.A. Qué.).

[199] *Québec (Comm. Des droits de la personne)* v. *Gauthier* (1993), 19 C.H.R.R. D/312 (T.D.P.Q.) [English Summary].
[200] *Québec (Comm. des droits de la personne)* c. *Coutu* (No 2) (1995), 26 C.H.R.R. D/31 (Trib.Qué.).
[201] *Garbett* v. *Fisher, supra* note 177.
[202] See *Larson* v. *Graham* (1999), 35 C.H.R.R. D/382 (B.C.H.R.T.).
[203] Information taken from <http://www.toronto.ca/socialservices/Policy/Basic.htm> (date accessed: January 9, 2007).
[204] The Golden Report on Homelessness recommended that "the shelter component of social assistance, which now disadvantages Toronto, should be adjusted to reflect local market condition." See *Report of the Mayor's Homelessness Action Task Force, supra* note 19 at vii.
[205] Information taken from Engeland, Lewis, Ehrlich & Che, *supra* note 13 at 45.
[206] Toronto Community and Neighbourhood Services, *Social Assistance and Social Inclusion: Findings from Toronto Social Services' 2003 Survey of Single Parents on Ontario Works* (June 2004), online: <http://www.toronto.ca/socialservices/pdf/singleparentsurvey.pdf>.
[207] Ministry of Community and Social Services, *Ontario Works: Quarterly Statistical Report*, (December 2006), online: <http://www.mcss.gov.on.ca/NR/rdonlyres/F5EF844D-DE16-4AD5-A226-F109866B951C/1075/OntarioWorkseng1.pdf>.
[208] Social assistance rates were raised by 3% for both OW and ODSP recipients in early 2005 and by 2% in 2006. The maximum shelter allowance under Ontario Works ranges from $342 per month for a single person, to $708 per month for a family of six or more. A lone parent of two children would receive a shelter allowance of $583 per month, plus a basic needs allowance of $602 per month (depending on the ages of the children), for a maximum total monthly income of $1185 per month; submission of the Ministry of Community and Social Services to Commissions Family Status Consultation and Income Security Advocacy Centre, *Social Assistance Rates Fact Sheet*, online: <http://www.incomesecurity.org/documents/2PercentIncreaseDetailedFactsheetNovember2006.pdf>.
[209] United Nations Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Canada*, (20 March 2003, A/58/38(Part I), paras.336-389 at paras. 357-8.
[210] J.D. Hulchanski, *How Households Obtain Resources to Meet their Needs: The Shifting Mix of Cash and Non-Cash Sources* (Toronto: University of Toronto, 1994) at 34-35; M. Ornstein, *Income and Rent: Equality Seeing Groups and Access to Rental Accommodation Restricted by Income Criteria* (Toronto: York University, 1994) at 63.
[211] J. Stapleton, *Report on Social Assistance Programs in Ontario* (April 1994) at 8.
[212] Commission des droits de la personne, *Pauvreté et droit au logement en toute égalité : une approche systémique* (Québec, avril 1997) at 50.
[213] The Quebec report further states that:

- Housing should not be seen as a good like any other because it fills a basic human need for shelter;
- Landlords are obligated to provide appropriate housing to individuals who can demonstrate their ability to fulfill the obligations of a lease without discrimination based on source of income or rent-to-income ratio measures; and
- The presence of risk does not justify a systemic refusal to rent to individuals on social assistance.

[214] *Kearney* v. *Bramalea Ltd. (No. 2)*(1998), 34 C.H.R.R. D/1 (Ont. Bd. Inq.).
[215] (2001), 39 C.H.R.R. D/111 (Ont. Sup. Ct.).
[216] *Vander Schaaf* v. *M.R. Property Management Ltd., supra* note 141.
[217] *Ibid.*
[218] The connection between membership in a group identified under the *Code* and the likelihood of being low income has been recognized by the Human Rights Tribunal of Ontario in several decisions as well as by the Courts. Therefore, measures that disadvantage those who are low-income are likely to disproportionately disadvantage members of *Code*-identified groups.

[219] Chisholm, *supra* note 1 at 26.
[220] *Report of the Mayor's Homelessness Action Task Force, supra* note 19.
[221] The Golden Report defines "homeless people" as "those who are 'visible' on the streets or staying in hostels, the 'hidden' homeless who live in illegal or temporary accommodation, and those at imminent risk of becoming homeless." *Ibid.* at iii.
[222] *Ibid.*
[223] However, homelessness in Toronto is particularly severe, with some reports claiming that, per capita, there are more homeless people in Toronto than in New York City and other major U.S. cities: "Once population differences are taken into account, the percentage of people in Toronto using shelters is actually 15.8 per cent higher than in New York." For more detail, see Shapcott, *supra* note 10 at 7.
[224] *Ibid.* at 2.
[225] Information taken from the *Report of the Mayor's Homelessness Action Task Force, supra* note 19 at iv.
[226] *Ibid.* at v.
[227] *Ibid.* at chapter 4.5.
[228] J.D. Hulchanski, "People Without Housing: Homelessness is a Human Rights Violation" (2000) 15(1) Speaking About Rights (Canadian Human Rights Foundation, online:<http://tdrc.net/Report-00-02-DH.htm> (date accessed: October 19, 2006). Professor Hulchanski specializes in housing policy, social welfare, community development and human rights.
[229] *Report of the Mayor's Homelessness Action Task Force, supra* note 19.
[230] See Article 17 of the *Universal Declaration of Human Rights*, *supra* note 74.
[231] *Ibid.* Article 22.
[232] *Ibid.* Article 23.
[233] *Ibid.* Article 26.
[234] Committee on Economic Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing*, 13 December 1991, Article 11(1).
[235] In 1995, the United Nations estimated that there were no fewer than 81 formal agreements which address such issues as poverty eradication, employment generation and social integration; J.W. Foster, "Meeting the Challenges: Renewing the Progress of Economic and Social Rights" (1998) 47 U.N.B.L.J. 197 at 197.
[236] As there is no complaint procedure under the *ICESCR*, the primary mechanism for its enforcement is the state reporting process. Pursuant to Articles 16 and 17, States parties undertake to submit periodic reports to the *ICESCR* Committee on the programmes and laws they have adopted and the progress made in protecting Covenant rights. The U.N. has promulgated guidelines for the preparation of reports.
[237] For example, Concluding Observations issued by the Committee on Economic, Social and Cultural Rights in 1998 expressed serious concern about the state of realization of economic and social rights in such a wealthy country as Canada. The more recent 2006 Concluding Observations, reiterate that most of the 1993 and 1998 recommendations have not been implemented: Canada United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant (Concluding Observations – Canada)*, 10 December 1998, E/C.12/1/Add.31 and United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant (Concluding Observations – Canada)*, 19 May 2006, E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 [hereinafter *2006 Concluding Observations*.
[238] The Committee identified a range of concerns, such as Canada's response to homelessness, a shortage of affordable housing, the insufficiency of minimum wage and social assistance rates, increasing poverty rates among *Code* protected groups, disparities between Aboriginal and African-Canadian people and the rest of the population with respect to realization of *ICESCR* rights, cuts to social programs, and the discriminatory impact of such cutbacks on certain disadvantaged groups and the significant barriers to enforcing ICESCR rights under domestic law. For more information, see the *2006 Concluding Observations*.
[239] *Ibid.*

[240] *Ibid.*
[241] See for example, the United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations on Report of Canada Concerning the Rights Covered by Articles 10 to 15 of the International Covenant on Economics, Social and Cultural Rights, UN doc. E/C.12/1993/19; 20 CHRR C/1. See also recent media coverage such as "Canada's Poor Face 'Emergency': UN" *The Toronto Star* (May 23, 2006), which reported that the United Nations Committee on Economic, Social and Cultural Rights again criticized Canada in its 2006 Annual Report for its inaccessible employment insurance program, its meagre minimum wages, and the fact that it has let homelessness and inadequate housing amount to a 'national emergency.'
[242] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, 7 April 1999, CCPR/C/79/Add.105.
[243] However, it should be noted that a human rights commission does not have control over the content of its enabling legislation and must rely on the provincial government in question to make amendments through the legislative process.
[244] *Québec (Comm. des droits de la personne)* v. *Gauthier*, *supra* note 199.
[245] For example, see Canadian Human Rights Commission, *Annual Report 1997* (Ottawa: Canadian Human Rights Commission, 1997). In addition, in 2001, the Canadian Association of Statutory Human Rights Agencies (CASHRA) adopted a resolution, which was fully supported by the Ontario Human Rights Commission, recommending the addition of social condition as a ground of discrimination, and communicated this resolution to all provincial and territorial governments and to the federal government. Human rights reform proposals in Saskatchewan and British Columbia have indicated strong support for inclusion of social condition in their human rights legislation; A.W. Mackay, T. Piper & N. Kim, *Social Condition as a Prohibited Ground of Discrimination Under the Canadian Human Rights Act* (Canadian Human Rights Act Review, 2000).
[246] In 1998, Senator Erminie Cohen introduced Bill S-11 which would have added social condition as a prohibited ground of discrimination to the *Canadian Human Rights Act*. The Bill passed unanimously through the Senate and, on October 19, 1998, received first reading in the House of Commons. On April 8, 1999 Justice Minister Anne McLellan announced the creation of the Canadian Human Rights Act Review Panel to consider, among other things, the addition of "social condition" to that Act. Five days later, Bill S-11 was defeated on second reading.
[247] Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision* (Ottawa: Canadian Human Rights Act Review Panel under the authority of the Minister of Justice and the Attorney General of Canada, 2000) (Chair: Gerard La Forest).
[248] New Brunswick's legislation was amended effective January 21, 2005, and Northwest Territories included the ground in their *Human Rights Act*, S.N.W.T. 2002, c.18.
[249] The statutory definitions further clarify that this "socially identifiable group" must be one "that suffers from social or economic disadvantage". Newfoundland's human rights statute incorporates the term "social origin" as a protected ground, which relates more to a person's birth status than to his or her current situation.
[250] Coverage extends to contracts, education, employment, housing, professional trades and associations, public services (restaurants, stores, hotels, government services, *etc.*), publications, purchase of property, occupations and trade unions.
[251] Nunavut and British Columbia specify "lawful source of income".
[252] See for example, Reem Bahdi, "A Modest Proposal: Using International Law and the Ontario Human Rights Code Against Child Poverty" in *Conference Proceedings* Ontario Human Rights Commission, Conference on Economic, Social and Cultural Rights (December 2000) at page 88-89.
[253] *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R 817 at paras. 70-71 citing R. Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994), at p. 330.
[254] The summary of proceedings, *Human Rights Commissions: Future Directions*, is available on the OHRC website, at www.ohrc.on.ca.
[255] The text of the resolutions can be found on the OHRC website.
[256] This document, from September 2001, is available on the publications page of the OHRC website, at www.ohrc.on.ca.

[257] Engeland, Lewis, Ehrlich & Che, *supra* note 13 at 35-36.
[258] *Ibid.* at 36.
[259] Section 10 of the Ontario *Human Rights Code*.
[260] *Ibid.*
[261] *Ibid.*
[262] *Report of the Mayor's Homelessness Action Task Force, supra* note 19 at iii.
[263] Engeland, Lewis, Ehrlich & Che, *supra* note 13 at 35-36.
[264] *Ibid.* at 7.
[265] M. Eaton, *supra* note 88 at 229.
[266] See http://www.wordspy.com/words/linguisticprofiling.asp (date accessed: January 3, 2007).
[267] Section 10 of the Ontario *Human Rights Code*.
[268] See Ontario Non-Profit Housing Website: <http://www.onpha.on.ca/issues_position_papers/housing/>.
[269] See Ontario Ministry of Health and Long-Term Care Website: <http://www.health.gov.on.ca/english/public/program/ltc/13_housing.html>.
[270] See <http://www.tiresias.org/guidelines/inclusive.htm>.
[271] Some jurisdictions stipulate that this includes association, affiliation, and/or activity.
[272] B.C. addresses these grounds in "tenancy," but not in "accommodation."
[273] "...except as provided by law."
[274] Where pregnancy is not a separate ground, it is included under sex, following *Brooks* v. *Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219.
[275] Although these grounds are specifically listed only in these jurisdictions, related complaints are addressed elsewhere under other grounds.